

AL-SHĀFI'Ī'S CONTRIBUTION TO ḤADĪTH WITH AN ANNOTATED  
TRANSLATION OF HIS WORK *JIMĀ'AL-ʿILM*

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**IN THE NAME OF *ALLĀH***  
**THE COMPASSIONATE, THE MERCIFUL**

**DECLARATION**

I, THE UNDERSIGNED, HEREBY DECLARE THAT THIS THESIS IS WRITTEN  
BY MYSELF AND ANY REFERENCES MADE TO THE SOURCES ARE DULY

ACKNOWLEDGED

ABDUL KARIM ALI



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## ABSTRACT

This thesis is a study of al-Shāfiʿī's contribution to *ḥadīth* in general and a study of his book *Jimāʿ al-ʿIlm* in particular. For this reason, the thesis falls into two parts. Part One focuses on al-Shāfiʿī's attitude to *ḥadīth* and to the views of his contemporaries on the subject, while Part Two consists of an annotated translation of *Kitāb Jimāʿ al-ʿIlm*.

After a general introduction, Part One divides into eight chapters. Chapter One deals with al-Shāfiʿī's life and travels. Chapter Two is a discussion of al-Shāfiʿī's role in the formulation of Islamic law, while Chapter Three assesses the position of *ḥadīth* in this formulation. Chapter Four gives an outline of al-Shāfiʿī's writings about *ḥadīth*, while Chapters Five, Six, Seven and Eight deal respectively with his views on the concept of "the *sunnah* of the Prophet", the acceptability of *khbar al-wāḥid* ("isolated traditions"), *mursal ḥadīths*, and the problem of seeming differences between *ḥadīths* (*ikhtilāf al-ḥadīth*).

Part Two consists of two chapters: the first (Chapter Nine) is a detailed introduction to al-Shāfiʿī's *Kitāb Jimāʿ al-ʿIlm*, while the second (Chapter Ten) is an annotated translation of the work.

## TRANSLITERATION

### Consonants

Arabic	Symbol	Arabic	Symbol	Arabic	Symbol
ا	'	ز	z	ق	q
ب	b	س	s	ك	k
ت	t	ش	sh	ل	l
ث	th	ص	ṣ	م	m
ج	j	ض	ḍ	ن	n
ح	ḥ	ط	ṭ	ه	h
خ	kh	ظ	ẓ	و	w
د	d	ع	ʿ		
ذ	dh	غ	gh		
ر	r	ف	f		

### Vowels and Diphthongs

Long Vowels	Short Vowels	Diphthongs
اَ ā	ا a	او aw
و ū	و u	اي ay
ي ī	ي i	

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**PART ONE: AL-SHĀFI'Ī AND ḤADĪTH**

## INTRODUCTION

The development of Islamic law reached its peak during the end of the ʿAbbasid caliphate, particularly during al-Ma'mūn's reign. Four existing Sunnī *madhhabs* were founded during this period. One of their founders was Muḥammad b. Idrīs al-Shāfiʿī (150H-204H). He is considered to be a central figure in the development of the science of *uṣūl al-fiqh* and his contribution to its formulation is well appreciated in most literature on *uṣūl al-fiqh*.

*Al-Risālah* for instance, one of al-Shāfiʿī's famous works, is credited with being a pioneering work in this field. *Al-Risālah* deals with fundamental issues with regard to *uṣūl al-fiqh* and it elucidates elements necessary to *mujtahids* in deriving rulings. These elements are the Qur'ān, *sunnah*, *ijmāʿ*, *qiyās*, *ikhtilāf*, *qawl al-Ṣaḥābah*, *nāsikh* and *mansūkh* and others. This great work has led many scholars to elaborate on and explain it in more detail (*sharḥ*). In recent years, Khalil I. Semaan has translated a part of the book on *nāsikh* and *mansūkh* into English under the title *ash-Shāfiʿī's Risālah: Basic Ideas*,<sup>1</sup> while Majid Khadduri has rendered the whole of *al-Risālah* into English under the title *Islamic Jurisprudence- Shāfiʿī's Risāla*.<sup>2</sup>

Many authors have tried to study al-Shāfiʿī's life and analyse his views on

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<sup>1</sup> Khalil I. Semaan, *Ash-Shāfiʿī's Risālah: Basic Ideas, with English Translation of the Chapters on al-Nāsikh wa al-Mansūkh*. (Arthur Jeffery Memorial Monograph no. 1) 1961, Lahore: Sh. Muhammad Ashraf.

<sup>2</sup> Majid Khadduri, *Islamic Jurisprudence Shāfiʿī's Risāla Translated with an Introduction, Notes and Appendices*. 1961. Baltimore: The John Hopkins Press.

various aspects of Islamic jurisprudence. Western scholars such as Ignaz Goldziher,<sup>3</sup> Duncan B. Macdonald,<sup>4</sup> Joseph Schacht,<sup>5</sup> W. Heffening,<sup>6</sup> Nicolas P. Aghnides,<sup>7</sup> N. J. Coulson,<sup>8</sup> John Burton<sup>9</sup> and others have examined his views. Schacht for instance, devotes his *Origins of Muhammadan Jurisprudence* to the study of al-Shāfiʿī. This study mainly discusses the position of *ḥadīth* in early Islam up to al-Shāfiʿī's time. The discussion of al-Shāfiʿī's views on *ḥadīth* dominates this book.

Muslim scholars have also conducted several researches on al-Shāfiʿī. Ahmad Hasan for example, discussed different issues of Islamic law and in most cases refers to al-Shāfiʿī's views. He did this in his two books, *The Early Development of Islamic Jurisprudence*<sup>10</sup> and *Analogical Reasoning in Islam*.<sup>11</sup>

Abdul Hamid b. Hj. Othman in his PhD thesis entitled "*Shāfiʿī and the Interpretation of the Role of the Qur'ān and the Ḥadīth*" analyses in detail al-Shāfiʿī's point of view regarding the two primary sources of law, i.e. the Qur'ān and the *sunnah*

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<sup>3</sup> See I. Goldziher, *Muslim Studies (Muhammedanische Studien)*. Transl. into English by C. R. Barber and S. M. Stern. Ed. S. M. Stern, London, 1971.

<sup>4</sup> See Duncan B. Macdonald, *Development of Muslim Theology, Jurisprudence and Constitutional Theory*. Lahore, 1972.

<sup>5</sup> See J. Schacht, *The Origins of Muhammadan Jurisprudence*. Oxford, 1967.

<sup>6</sup> W. Heffening, "al-Shāfiʿī", *E.I.*

<sup>7</sup> Nicolas P. Aghnides, *Mohammedan Theories of Finance*. New York, 1916.

<sup>8</sup> See N. J. Coulson, *A History of Islamic Law*, Edinburgh, 1964.

<sup>9</sup> John Burton, *The Sources of Islamic Laws-Theory of Abrogation*. 1990. Edinburgh; *An Introduction the Ḥadīth*. 1994. Edinburgh: Edinburgh University Pres.

<sup>10</sup> Ahmad Hasan, *The Early Development of Islamic Jurisprudence*. 4th. ed. Islamabad (Pakistan): Islamic Research Institute, 1988.

<sup>11</sup> Ahmad Hasan, *Analogical Reasoning in Islam*. Islamabad: Islamic Research Institute, 1986.

of the Prophet,<sup>12</sup> while a recent study by Ahmad Hakim entitled *Muḥammad ibn Idrīs al-Shāfi'ī and His Role in the Development of Islamic Legal Reasoning*<sup>13</sup> describes al-Shāfi'ī as having a central role in the development of Islamic law, whose legal theory is based on two principles: an insistence on following the Qur'ān and *ḥadīths* and a restriction on the use of reason. It also demonstrates that al-Shāfi'ī established the hierarchy of the four sources of law: the Qur'ān, *sunnah*, *ijmā'* and *qiyās*.

There are many works by contemporary authors which focus on al-Shāfi'ī's biography and his position in Islamic Jurisprudence. Among them are Muṣṭafā 'Abd al-Rāziq's *al-Imām al-Shāfi'ī*, Muḥammad Abū Zahrah's *al-Shāfi'ī Ḥayātuh wa 'Aṣruh-Ārā'uh wa Fiqhuh*, Dāwūd b. Sulaymān al-Baghdādī's *Manāqib al-Imām al-Shāfi'ī*, Muḥammad Muṣṭafā's *Kitāb al-Jawhar al-Nafīs fī Tārīkh Ḥayāt al-Imām ibn Idrīs*, 'Abd al-Ḥalīm al-Jundī's *al-Shāfi'ī- Nāṣir al-Sunnah wa Wāḍi' al-Uṣūl*, Muṣṭafā al-Shak'ah's *al-Imām Muḥammad b. Idrīs al-Shāfi'ī*, Aḥmad al-Sharbāsī's *al-A'immat al-Arba'ah* and 'Abd al-Raḥmān al-Sharqāwī's *A'immat al-Fiqh al-Tis'ah- al-Shāfi'ī*.

The above works mainly relied on classical biographical references such as Ibn Abī al-Ḥātim's *Ādāb al-Shāfi'ī wa Manāqibuh*, al-Bayhaqī's *Manāqib al-Shāfi'ī*, Ibn Ḥajar al-'Asqalānī's *Tawālī al-Ta'sīs*, Ibn 'Abd al-Barr's *al-Intiqā' fī Faḍā'il al-A'immah al-Fuqahā' al-Thalāthah* and others.

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<sup>12</sup> A. H. b. Haji Othman, "*Shāfi'ī and the Interpretation of the Role of the Qur'ān and the Ḥadīth*". Unpublished PhD thesis, University of St. Andrews, 1976.

<sup>13</sup> Ahmad Hakim, "*Muḥammad ibn Idrīs al-Shāfi'ī and His Role in the Development of Islamic Legal Reasoning*". MA Thesis, McGill University (Canada), 1992.



As far as al-Shāfi'ī's contribution to Islamic jurisprudence is concerned, some higher institutions of learning have shown their appreciation of his contribution by organizing seminars. For instance, there were two international seminars on al-Shāfi'ī held in recent years in Malaysia. They were organised respectively by the University of Malaya together with the Department of Islamic Affairs, Kuala Lumpur<sup>14</sup> and by the International Islamic University, Selangor, Malaysia.<sup>15</sup> In these seminars, al-Shāfi'ī's views on various aspects of law were discussed.

Having provided a brief survey of work done on al-Shāfi'ī, it is worth noting al-Shāfi'ī's contribution to *ḥadīth*. Prior to al-Shāfi'ī's establishment of the new *madhhab*, the disagreement between the *ahl al-ra'y* and the *ahl al-ḥadīth* was quite serious. Reports show that the *ahl al-ḥadīth*, despite their emphasis on narrating *ḥadīth* (but as claimed by the *ahl al-ra'y*, that they did that without knowing reasons behind certain issues), were unable to have a balanced discussion with the *ahl al-ra'y*.<sup>16</sup> In other words, the *ahl al-ḥadīth* was inferior to the *ahl al-ra'y*.<sup>17</sup> The presence of al-Shāfi'ī in this environment helped the *ahl al-ḥadīth* to have a good counter argument and defeat them. Thus he was called *nāṣir al-sunnah*. His eclectic approach

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<sup>14</sup> *Seminar Pemikiran Islam (Multaqā al-Fikr al-Islāmī)*. Kuala Lumpur. (Ocktober 1989).

<sup>15</sup> *International Seminar on al-Imām al-Shāfi'ī*. Selangor (Malaysia), August 1990.

<sup>16</sup> Al-Sibā'ī citing Ibn 'Abd al-Barr, *Jāmi' Bayān al-'Ilm*, vol. II, p. 12 says that it was reported that one of the *ahl al-ḥadīth* had written down a *ḥadīth* without having understood or thought about it. And when he was asked about a problem, he was stunned as if he was a slave (*mukātab*). According to al-Sibā'ī, a few examples given do demonstrate that some of *ahl al-ḥadīth* understood *ḥadīth* literally, without thinking of the real meaning of it. See Muṣṭafā al-Sibā'ī, *al-Sunnah wa Makānatuhā fī al-Tashrī' al-Islāmī*. 2nd ed., 1978. Dimashq: al-Maktab al-Islāmī, pp. 406-7.

<sup>17</sup> Muḥammad al-Khuḍari Bek, *Tārīkh al-Tashrī' al-Islāmī*. 8th. ed. 1967, Cairo: Dār al-Fikr, p. 119; Majid Khadduri, *Islamic Jurisprudence- Shāfi'ī's Risāla*. pp. 4, 7.

to this matter made the *ahl al-ra'y* appreciate the importance of *ḥadīth* more widely, as well as making the *ahl al-ḥadīth* pay attention to the importance of using *qiyās* (analogical reasoning) in deriving rulings.

With regard to al-Shāfi'ī's contribution to *ḥadīth*, most authors believe that his most significant one is that *ḥadīth* in general, and *khābar al-wāḥid* in particular have been recognised in formulating such rulings. Thus, it is no wonder that he was called the defender of *the sunnah* (*nāsir al-sunnah/al-ḥadīth*). In fact, al-Shāfi'ī's role in this matter was to re-inforce their acceptance. This phenomenon resulted from the existence of a fraction of the Muslim community at that time who either rejected all *ḥadīths* or rejected *khābar al-khāṣṣah* (*khābar al-wāḥid*) as mentioned in *Jimā' al-ʿIlm*.

The appearance of the collections of *ḥadīth* or *al-kutub al-sittah*, i.e. those of al-Bukhārī (194-256), Muslim (204-261), Ibn Mājah (207-273), al-Tirmidhī (209-279), Abū Dāwūd (202-275) and al-Nasā'ī (215-302) is claimed to be linked in al-Shāfi'ī's role in establishing the authority of *ḥadīth* and the concept of the *sunnah* of the Prophet. Before al-Shāfi'ī's time, books of *ḥadīth*, for instance, *al-Muwatta'* of Mālik b. Anas contained not only *ḥadīth* of the Prophet, but also *āthār* of Companions and Successors. But the later collections contain only *ḥadīth* of the Prophet. Al-Shāfi'ī's principle is that *ḥadīth* or *sunnah* of the Prophet is *sui generis*, and needs no other sayings from either Companions or Successors to confirm it. According to him, once a *ḥadīth* of the Prophet has been definitely confirmed as coming from the Prophet, it

cannot be abandoned or set aside because of the existence of other *āthār* which opposed it.

There are some specific reasons why this study has been chosen. Malaysia's background in terms of her religious environment has pushed the author to study in depth the history of Islamic law and especially al-Shāfi'ī's views on *ḥadīth*. Not only do Muslims in Malaysia belong to the Shāfi'ite *madhhab*, it is in fact the official *madhhab* subscribed to in Malaysia.<sup>18</sup> Furthermore, from the end of 1980 up to the present day there emerged a movement called "*ahl al-Qur'ān*", led by Kassim Ahmad who believes only in the Qur'ān. Thus he rejects the *ḥadīths* of the Prophet because according to him the Qur'ān is sufficient. His book, *Hadis: satu penilaian semula (Ḥadīth: an Evaluation)*<sup>19</sup> has caused controversy among Muslims in Malaysia. This controversy affected the author so much so that he decided to pursue further research on this subject.

Most of the study on al-Shāfi'ī focuses on his achievements in the formation of Islamic law as constituted by *uṣūl al-fiqh*, in which *ḥadīth* of the *sunnah* of the Prophet is one of its fundamental sources. Therefore, the aims of this thesis are to study and analyse al-Shāfi'ī's views on *ḥadīth* in its different aspects, and in particular, to analyse one of al-Shāfi'ī's writings on *uṣūl al-fiqh*, *kitāb Jimā' al-ʿIlm*. This analysis will be presented together with an annotated translation of *Jimā' al-ʿIlm*.

This study will be divided into two parts. Part One mostly covers al-Shāfi'ī's

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<sup>18</sup> Abdul Halim el-Muhammady, "the Influence of the Shafi'ite School in the Muslim Law in Malaysia", paper presented in *Seminar Pemikiran Islam*, Oct. 1989, Kuala Lumpur.

<sup>19</sup> Kassim Ahmad, *Hadis: Satu Penilaian Semula*. Selangor: Media Intelek Sdn. Bhd., 1986

views on various aspects of *ḥadīth*, while Part two focuses on *Jimāʿ al-ʿIlm*, providing a detailed introduction to this work together with an annotated translation of it.

## CHAPTER ONE: AL-SHĀFI'Ī'S BIOGRAPHY AND TRAVELS

### 1.1 Biography of al-Shāfi'ī

Muḥammad b. Idrīs al-Shāfi'ī (150-204H) was a *mujtahid* and a *mujaddid* (reformer) of the second century of the Hijrah<sup>1</sup> and the founder of the Shāfi'īte *madhhab*, the third in the chronology of existing *madhāhib*. A study of his biography would need thorough investigation for reports on him are scattered in Islamic classical books. One of the difficulties which arises is how to reconcile the seemingly contradictory reports on his life, especially pertaining to the date and the details in his life chronology.

Al-Mas'ūdī (d.345) is regarded as the first historian who wrote on al-Shāfi'ī,<sup>2</sup> whose later biographies are principally based on old *manāqib* works such as that of Dāwūd al-Zāhirī (d.270), al-Sājī (d.307), Ibn Abī Ḥātim (d.327) and others.<sup>3</sup> However, one modern author considered the *Manāqib* of Ibn Abī Ḥātim al-Rāzī to be the earliest and the most accurate biography of al-Shāfi'ī.<sup>4</sup> Al-Nawawī,<sup>5</sup> on the other hand, claimed that al-Bayhaqī's *Manāqib* is the most complete and accurate

<sup>1</sup> Aḥmad b. Ḥanbal considered 'Umar b. 'Abd al-'Azīz as the *mujaddid* (reformer) of the first century and al-Shāfi'ī as the reformer of the second century (al-Subkī, *Tabaqāt al-Shāfi'iyyah*, vol. I. p. 104; al-Suyūṭī, *Ṭabaqāt al-Ḥuffāz*, Ed. 'Alī Muḥammad 'Umar. 1973. Cairo: Maṭba'at al-Istiqlāl al-Kubrā, p. 154). Al-Shāfi'ī also gained the reputation of *al-Imām Zayn al-Fuqahā'*, *Sayyid al-Fuqahā'*, *Tāj al-Fuqahā'*, *Nāṣir al-Sunnah* (al-Baghdādī, *Tārīkh Baghdād*. 1931. Cairo: Maṭba'at al-Sa'ādah. vol.II. p. 59)

<sup>2</sup> W. Heffening, "al-Shāfi'ī", *The Encyclopaedia of Islam*, vol. V. p. 252.

<sup>3</sup> *Ibid.*, p. 252.

<sup>4</sup> 'Abdur-Raḥmān I. Doi, *Sharī'ah: The Islamic Law*. London: Ṭā-Hā Publishers, 1984, p.103. His claim that the *manāqib* of Ibn Abī Ḥātim is the earliest is also shared by Majid Khadduri (*Islāmic Jurisprudence-Shāfi'ī's Risāla*. p. 8)

<sup>5</sup> Al-Nawawī, *Tahdhīb al-Asmā' wa al-Lughāt*. n.d. Beirut: Dār al-Kutub al-'Ilmiyyah, vol. I., p. 44.

account which describes all matters concerning al-Shāfi'ī.

Al-Shāfi'ī's full name is Muḥammad b. Idrīs b. al-°Abbās b. °Uthmān b. Shāfi' b. al-Sā'ib b. °Ubayd b. °Abd Yazīd b. Hāshim b. Muṭṭalib b. °Abd Manāf. He was of the Prophet's kin; one of °Abd Manāf's sons (Hāshim) was the Prophet's ancestor.<sup>6</sup> Thus al-Shāfi'ī belonged to the Hāshimī tribe of the Quraysh which is directly connected to the Prophet.

Al-Shāfi'ī was born in the year 150H and died in Egypt in the year 204H.<sup>7</sup> However, there are contradictory reports about his birthplace. Some say that it was Ghazzah, while others claim it to be °Asqalān. The majority of his biographers were inclined, however, to accept it as Ghazzah. By way of attempting to reconcile the conflicting reports, they interpreted that both Ghazzah and °Asqalān were in Palestine and were near to each other.<sup>8</sup> It is also possible that when Ghazzah is mentioned, it is meant the village, with °Asqalān being the town.

After his father's death, al-Shāfi'ī's mother took him to Palestine where he lived with the Yamanī tribe to which her ancestors belonged. Later, she travelled to

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<sup>6</sup> Ibn °Abd al-Barr, *al-Intiqā' fī Faḍā'il al-A'imma al-Thalāthah al-Fuqahā'*. n.d. Beirut: Dār al-Kutub al-°Ilmiyyah, p. 66; al-Bayhaqī, *Manāqib al-Shāfi'ī*. Ed. al-Sayyid Aḥmad Ṣaqr. 2 vols. 1971. Cairo: Maktabat Dār al-Turāth, p. 76; Ibn Ḥajar, *Tawālī al-Ta'sīs fī Ma'ālī Muḥammad b. Idrīs*. Ed. Abū al-Fidā' °Abd Allāh al-Qādī. 1986 p. 24; Yāqūt al-Rūmī, *Irshād al-Arīb ilā Ma'rifat al-Adīb known as Mu'jam al-Udabā' wa Ṭabaqāt al-Udabā'*. 2nd ed., D. S. Margoliouth. 1931. London. vol. VI. p. 367.

<sup>7</sup> Al-Nawawī, *Tahdhīb al-Asmā' wa al-Lughāt*. vol. I. p. 252. According to some reports al-Shāfi'ī was born in the year that Abū Ḥanīfah died, while others say that he was born on the same day that the latter died. Perhaps such authors endeavoured to interpret "the day" to mean the time and not the day per se as such. (See Yāqūt, *Mu'jam al-Udabā'* p. 368; Ibn Khallikān, *Wafayāt al-A'yān*. Ed. Susanna Diwald. 1986. Beirut: n.p., p. 165; Ibn Ḥajar, *Tawālī*. p. 53); Al-Nawawī, *Tahdhīb*. p. 45. Al-Mas'ūdī mentioned that al-Shāfi'ī was 54 years old when he died which was during the caliphate of al-Ma'mūn (al-Mas'ūdī, *Murūj al-Dhahab wa Ma'ādin al-Jawhar*. 1973, Beirut: Dār al-Andalus, vol.III. p. 346).

<sup>8</sup> Yāqūt, *Mu'jam al-Udabā'*. vol. VI. p. 368.

Makkah with al-Shāfi'ī when he was ten years old.<sup>9</sup>

## 1.2 Historical Life of al-Shāfi'ī

### 1.2.1 Al-Shāfi'ī in Makkah

As a child, al-Shāfi'ī was very intelligent, bright, and always very keen to learn. He began his studies with the learning of the Qur'ān and had fully committed it to memory at the early age of seven.<sup>10</sup> One of his Qur'ān teachers was Ismā'īl b. Qaṣṭanṭīn.<sup>11</sup> Following his early childhood which was devoted to learning, al-Shāfi'ī afterwards frequented the mosque to learn *ḥadīth*<sup>12</sup> and participate in 'ulamā's' discourses.

He also spent a substantial period of time staying with the tribe of al-Hudhayl, in the desert outside Makkah, to acquire refined Arabic for which the tribe was renowned.<sup>13</sup> As a result, he was excellent in the language and its poetry, as well as the tales (*akhbār*) and history of the Arabs. He was even able to compose poetry himself.<sup>14</sup>

Al-Shāfi'ī studied *fiqh* and *ḥadīth* under leading traditionists (*muḥaddith*) and

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<sup>9</sup> Al-Baghdādī, *Tārīkh Baghdād*, vol.II, p. 59. Some reports say that the incident took place when he was only two years old. See Ibn Abī Ḥātim, *Ādāb al-Shāfi'ī wa Manāqibuh*. Ed. 'Abd al-Ghanī 'Abd al-Khālīq. 1953. Syria: Maktabāt al-Turāth al-Islāmī, p. 23; Ibn Ḥajar, *Tawālī*, pp. 49-50.

<sup>10</sup> Al-Suyūṭī, *Ṭabaqāt al-Ḥuffāz*, p. 154; 'Abdur Raḥmān I. Doi, *Sharī'ah*, p. 104.

<sup>11</sup> Ibn Abī Ḥātim, *Ādāb al-Shāfi'ī*, pp. 142-143; Muḥammad Zuhri al-Najjār, *Introduction to al-Umm*. Beirut: Dār al-Ma'rifah. vol. I, p. (bā').

<sup>12</sup> Al-Bayhaqī, *Manāqib al-Shāfi'ī*, p. 92.

<sup>13</sup> Yāqūt, *Mu'jam al-Udabā'*, p. 369 states that al-Shāfi'ī stayed with the tribe for seven years whereas it was twenty years according to al-Baghdādī, *Tārīkh Baghdād*, vol.II., p. 63.

<sup>14</sup> *Ibid.*

lawyers (*faqīh*) of Makkah, such as Sufyān b. °Uyaynah,<sup>15</sup> Muslim b. Khālīd al-Zanjī, Sa°d b. Sālim, Dāwūd b. °Abd al-Rahmān al-Aṭṭār, and °Abd al-Majīd b. °Abd. al-°Azīz b. Abī Rawād.<sup>16</sup> He soon exhausted all the sources of legal knowledge available in Makkah and was authorised by his teacher, al-Zanjī, to give *fatwās* at the age of fifteen.<sup>17</sup>

### 1.2.2 Al-Shāfi° in Madīnah

Although he was certified as qualified to give *fatwās* by his teacher, he desired further legal training and set out to study under the leading jurist of the Hijāz, Imām Mālik b. Anas (d. 179H). Mālik was the most authoritative scholar on *fiqh* and *ḥadīth* in Madīnah.<sup>18</sup> Al-Shāfi° was well-prepared and memorised the *al-Muwaṭṭa'* of Mālik prior to meeting him. This impressed his new teacher and he remained there until his teacher died in the year 179H.<sup>19</sup>

In Madīnah, he not only studied under Mālik, but also under Ibrāhīm b. Abī Yahyā,<sup>20</sup> Ibrāhīm b. Sa°d al-Anṣārī, °Abd. al-°Azīz b. Muḥammad and others.<sup>21</sup>

<sup>15</sup> His full name is Sufyān b. °Uyaynah b. Abī °Imrān Maymūn al-Hilālī, Abū Muḥammad al-Kūfī al-A°war. Died 198H in Makkah. See al-Suyūṭī, *Ṭabaqāt al-Ḥuffāz*. p. 113.

<sup>16</sup> Ibn Ḥajar, *Tawālī al-Ta°sīs*. p. 52.

<sup>17</sup> Ibn Abī Ḥātim, *Ādāb al-Shāfi°*. p. 39; al-Suyūṭī, *Ṭabaqāt al-Ḥuffāz*. p. 154.

<sup>18</sup> Ibn Ḥajar, *Tawālī al-Ta°sīs*. p. 73.

<sup>19</sup> Al-Bayhaqī, *Manāqib al-Shāfi°*. vol. I. p. 103.

<sup>20</sup> He was one of the Mu°tazilah. Al-Fakhr al-Rāzī said: "They agreed that Ibrāhīm b. Yahyā was a Mu°tazilī, and this does not endanger Shāfi°'s reputation because he took only *fiqh* and *ḥadīth* from him, not *uṣūl al-dīn* (see Abū Zahrah, *al-Shāfi° Ḥayātuh wa °Asrūh Ārā'uh wa Fiqhuh*. 1948. Cairo: Dār al-Fikr, p. 39). Al-Bayhaqī reports that al-Shāfi° criticized him for *ḥumq* (foolishness). There are reports of al-Shāfi° and Ibrāhīm b. Yahyā apparently contradicting each other. At one time he is credited with title *thiqah* and at another time as *mudallis al-ḥadīth*. See al-Bayhaqī, *Manāqib al-Shāfi°*. vol. I., pp. 532-3.



During that period, al-Shāfi'ī met the leading jurist of Egypt, al-Layth b. Sa'd while the latter was studying under his teacher, Mālik. They might have had discussions on various matters.<sup>22</sup>

### 1.2.3 Al-Shāfi'ī in Yaman (179-184H)

After Mālik's death in 179H, al-Shāfi'ī went to Yaman as judge and gained a good reputation for being just. His appointment took place after the visit to Madīnah of the governor of Yaman who, at the suggestion of some Quraysh, appointed al-Shāfi'ī to the post. However, al-Shāfi'ī was not spared jealousies from among some circles and he was alleged to have supported the 'Alid movement against the 'Abbāsīd dynasty. He was brought to the Caliph Hārūn al-Rashīd but was released and pardoned partly due to his eloquent response to the caliph's questions.<sup>23</sup>

### 1.2.4 Al-Shāfi'ī in Baghdād (184-186H)

Political enmity brought al-Shāfi'ī from Yaman to Baghdād, the centre of the 'Abbāsīds' administration. Here, he was able to collaborate with Muḥammad b. Ḥasan

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<sup>21</sup> Ibn Ḥajar, *Tawālī al-Ta'sīs*. pp. 62-73; Sha'bān Muḥammad Ismā'īl, *Uṣūl al-Fiqh-Tā'rīkhuh wa Rijāluh*. 1981. Riyāḍ: Dār al-Marīkh, p. 64.

<sup>22</sup> Ibn Abī Ḥātim, p.39; Ibn Ḥajar. p. 57. Up to this point, al-Shāfi'ī already knew of the different patterns of thoughts of the different teachers of the different regions such as Makkah, Madīnah and Egypt (al-Layth).

<sup>23</sup> Ibn Abī Ḥātim, *Ādāb al-Shāfi'ī wa Manāqibuh*. p. 78; al-Bayhaqī, *Manāqib al-Shāfi'ī*. vol. I., p. 151; Ibn Ḥajar, *Tawālī al-Ta'sīs*. p. 129. Most authorities reject that al-Shāfi'ī was involved in the 'Alid movement. Ibn al-Nadīm for instance states that al-Shāfi'ī was very strong against (*kān shadīdan fī al-tashayyū'*) that movement. See Ibn al-Nadīm, *al-Fihrist*. n.p. Cairo, p. 294.

al-Shaybānī's circle which was to have a great impact on his legal reasoning.<sup>24</sup> We are told that he took an active part in discourses and arguments with Ḥanafī jurists,<sup>25</sup> that he strenuously defended Mālik's position<sup>26</sup> and that he seemed to have earned the reputation of being the upholder of *ḥadīth* in his relentless efforts in establishing the supremacy of the *ḥadīths*.<sup>27</sup>

Al-Shāfi'ī studied under Abū Ḥanīfah's disciple, Muḥammad b. Ḥasan al-Shaybānī and had lengthy deliberations with him. He was said to have copied a huge number of books of the people of 'Irāq which are described as being as many as a camel-load.<sup>28</sup> At this point of time, al-Shāfi'ī knew thoroughly the opinions and thoughts of Abū Ḥanīfah, then the most authoritative jurist in 'Irāq through studying under his disciple, Muḥammad b. al-Ḥasan al-Shaybānī and the latter's school of thought as well as having mastered the *fiqh* of Mālik. He also studied under Wākī b. al-Jarrāḥ, Hammām b. Usāmah al-Hāshimī al-Kūfī, 'Abd al-Majīd al-Baṣrī and others.<sup>29</sup>

Al-Shāfi'ī was also well-versed in the thought of two schools, Madīnah and Kūfah. In other words, he knew the distinction between the *madrasah* of *ahl al-ḥadīth*

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<sup>24</sup> Majid Khadduri, p. 12.

<sup>25</sup> According to Ibn al-Nadīm, al-Shāfi'ī stayed one year with al-Shaybānī. *Al-Fihrist*, p. 293.

<sup>26</sup> Up to this point, al-Shāfi'ī considered himself as a follower of Mālik. Cf. al-Bayhaqī, *Manāqib al-Shāfi'ī*, vol. I., pp. 182-3.

<sup>27</sup> Ibn Abī Ḥātim, *Ādāb al-Shāfi'ī*, pp. 170-182; al-Bayhaqī, *Manāqib al-Shāfi'ī*, pp. 24-26; al-Baghdādī, *Tārīkh Baghdād*, p. 68. Majid Khadduri, *Islamic Jurisprudence*, p. 12.

<sup>28</sup> Ibn Abī Ḥātim, *Ādāb al-Shāfi'ī*, p. 33.

<sup>29</sup> Shābān, *Uṣūl al-Fiqh*, p. 65.

and the *madrasah* of *ahl al-ra'y*.<sup>30</sup> It was then that al-Shāfi'ī started composing books and commenced the teachings of his own methodology, neither ʿIrāqī nor Hijāzī but a combination of both. He was indeed an eclectic jurist.<sup>31</sup>

### 1.2.5 Al-Shāfi'ī in Makkah (186-195H)

In the year 186H, al-Shāfi'ī returned to Makkah, the place where his early life began, and preoccupied himself with teaching. His teachings, however, revealed unexpected differences with Mālik, for his thorough grasp of Mālikī and Ḥanafī legal opinions had made him aware of the different approaches.<sup>32</sup>

He stayed here for about nine years, devoting his time to teaching and deliberating with other scholars especially during the pilgrimage season. A new *madhhab*<sup>33</sup> or school of thought was then founded which combined the two different thoughts of *ahl al-ḥadīth* and *ahl al-ra'y*.<sup>34</sup> This was the culmination of his journeys to the different regions and his learning under the various teachers of the different schools.

### 1.2.6 Al-Shāfi'ī's Second Visit to Baghdād (195-197H)

In 195H, al-Shāfi'ī revisited Baghdād, this time as a learned man and the

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<sup>30</sup> It is said that his earlier works for instance *al-Hujjah* and others was influenced by the Irāqī approach, i.e. al-Shaybānī's method.

<sup>31</sup> Sha'bān, *Uṣūl al-Fiqh*. p. 65; Abū Zahrah, *al-Shāfi'ī*. p. 25.

<sup>32</sup> Majid Khadduri, *Islamic Jurisprudence*. p. 13.

<sup>33</sup> Abū Zahrah, *al-Shāfi'ī*. p. 25.

<sup>34</sup> This new *madhhab* attempted to reconcile between the *ahl al-ḥadīth* and the *ahl al-ra'y*.

leader of a new *madhhab*. His legal reasonings had matured, and his stature as a jurist had grown sufficiently to allow him to follow an independent line of legal speculation.

In the short time in which he stayed there, al-Shāfi'ī expounded his method of *uṣūl*. One of his disciples in 'Irāq, al-Karābīsī said, "we did not know what is the Qur'ān, the *sunnah* and the *ijmā'* before this, until al-Shāfi'ī came to us. He explained what is the Qur'ān, *sunnah* and *ijmā'*".<sup>35</sup>

It is said that al-Shāfi'ī composed his first book on *uṣūl al-fiqh*, i.e. *al-Risālah* at the request of 'Abd al-Raḥmān b. Maḥdī.<sup>36</sup>

### 1.2.7 Al-Shāfi'ī Returns to Makkah and Goes to Egypt

After two years in Baghdād, al-Shāfi'ī returned to Makkah for a short stay and then went back again to Baghdād for several months. Then he left Baghdād for Egypt.<sup>37</sup> It is not quite clear as to why he made this move. Some authorities suggested that while in Baghdād, al-Shāfi'ī attached himself to 'Abd Allāh b. Mūsā, who invited him to settle in Egypt. We are also told that the Caliph al-Ma'mūn offered him the position of a judge, but he declined it.<sup>38</sup>

During the five years he lived in Egypt, al-Shāfi'ī totally devoted his time to teaching. He started his teaching at the Mosque of 'Amr b. al-Āṣ and divided the

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<sup>35</sup> Abū Zahrah, *al-Shāfi'ī*. p. 145.

<sup>36</sup> Al-Bayhaqī, *Manāqib al-Shāfi'ī*. vol. I. pp. 230-4.

<sup>37</sup> Abū Zahrah, *al-Shāfi'ī*. p. 27; Majid Khadduri, *Islamic Jurisprudence*. p. 14.

<sup>38</sup> Al-Bayhaqī, *Manāqib al-Shāfi'ī*. p. 38; Ibn Ḥajar, *Tawālī al-Ta'sīs*. p. 84.

teachings into categories, such as Qur'ān, *Ḥadīth*, °Arabic and others.<sup>39</sup> We are told that his leading disciples such as al-Rabī° b. Sulaymān al-Murādī (d.270H), al-Buwayṭī (d.231) and al-Muzanī (274H) were in the habit of writing down his spoken words, and that al-Shāfi° would correct the texts as they were read aloud before him.<sup>40</sup> This explains the reason for the accuracy of al-Shāfi°'s discourse which has come down to us.

### 1.2.8 Al-Shāfi°'s Death

Al-Shāfi° died at the age of fifty five years in the end of Rajab, 204H, in Fuṣṭāṭ and was buried in the vault of Banū °Abd al-Ḥakam, near the mountain of al-Muqaṭṭam. As far as the cause of his death is concerned, there are apparent contradictory reports about it. The first is that he died of serious intestinal illness (*bawāsīr*) which had kept him frail and ailing during the later years of his life. The second is that he died after being attacked by the followers of Fityān.<sup>41</sup>

Concerning the second report, there was in Egypt, Fityān b. Abī al-Samḥ, one of the followers of the Mālikī school, who had many *munāẓarāt* with al-Shāfi°. One day they had a *munāẓarah* on *bay° al-°abd al-marhūn*. They both held differing views and it was reported that Fityān lost in the argument. In another report, the followers of Mālik in Egypt became angry when al-Shāfi° wrote a book against Mālik (*khilāf*

<sup>39</sup> Al-Najjār, *Introduction to al-Umm*. p. (zay).

<sup>40</sup> Ibn Abī Ḥātim, *Ādāb al-Shāfi°*. p. 71; Ibn Ḥajar, *Tawālī al-Ta'sīs*. p. 77; al-Bayhaqī, *Manāqib al-Shāfi°*. p. 49.

<sup>41</sup> Yāqūt, *Mu°jam al-Udabā'*. pp. 394-5; Ibn Ḥajar, *Tawālī al-Ta'sīs*. p. 56.

*Mālik*)<sup>42</sup> and tried to assault al-Shāfi'ī. This event led to the governor al-Sarī b. al-Ḥakam ordering Fityān to be beaten. After that event, some of Fityān's extremist supporters attended al-Shāfi'ī's *ḥalaqah* (circle) and attacked the latter when he was alone. It was claimed that, after the incident, al-Shāfi'ī remained ill until he died.<sup>43</sup> However, most authors consider it more probable (*tarjīḥ*) that al-Shāfi'ī died because of intestinal illness (*bawāsīr*).

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<sup>42</sup> 'Abd al-Ḥalīm al-Jundī, *al-Imām al-Shāfi'ī Nāṣir al-Sunnah wa Wāḍi' al-Uṣūl*. n.d. Egypt: Dār al-Ma'ārif, p. 289.

<sup>43</sup> Cf. Muḥammad Zakī al-Dīn Muḥammad Qāsim, *Rijāl wa Manāḥij fī al-Fiqh al-Islāmi (al-A'immah al-Arba'ah)*. 1975 Idārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, pp. 137-8.

According to 'Abd al-Ḥalīm al-Jundī, this account is unreliable. Instead he suggests the second factor (*bawāsīr*), *al-Imām al-Shāfi'ī Nāṣir al-Sunnah wa Wāḍi' al-Uṣūl*. pp. 289-297.

## CHAPTER TWO: AL-SHĀFI'Ī'S ROLE IN THE FORMULATION OF ISLAMIC LAW

### 2.1 Al-Shāfi'ī and *Uṣūl al-Fiqh*

It is widely claimed that al-Shāfi'ī was the first person to systematise *uṣūl al-fiqh*.<sup>1</sup> However, this claim has been challenged by the Shī'ah and the followers of the Ḥanafī school of thought, who argued that scholars preceding al-Shāfi'ī had already dealt with the subject.

This needs proper investigation. One might suspect that the respective claimants were motivated by *madhhab* chauvinism.<sup>2</sup> For instance, the Shī'ah and the followers of the Ḥanafī *madhhab* claimed that their leaders were the founders and pioneers of *uṣūl al-fiqh*. Al-Sayyid Ḥasan al-Ṣadr<sup>3</sup> of the Shī'ah claimed that Muḥammad al-Bāqir (57-115H)<sup>4</sup> and his son, Ja'far al-Ṣādiq (83-149H)<sup>5</sup> laid the

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<sup>1</sup> Ibn Khaldūn, *Muqaddimah*. 1410H. Iran: Maṭba'at Amīr, p. 455; J. Schacht, *The Origins of Muhammadan Jurisprudence*. pp. 56, 77, 59, 79, 287, 315ff and passim; N.J. Coulson, *A History of Islamic Law*, pp. 60-1; Abū Zahrah, *al-Shāfi'ī*. p. 178; Majid Khadduri, *Islamic Jurisprudence Shāfi'ī Risāla*. pp. 40-1; Badrān, Abū al-ʿAynayn Badrān, *Uṣūl al-Fiqh al-Islāmī*. n.d. Iskandariyyah: Mu'assasat Shabāb al-Jāmi'ah, p. 11; John Burton, *The Sources of Islamic Law: Islamic Theories of Abrogation*. p. 12; M. R. ʿUthmān, "al-Imām al-Shāfi'ī *Wāḍi' ʿIlm al-Uṣūl*", paper presented in *International Seminar on al-Shāfi'ī*, 13-15th. August 1990, Selangor Malaysia, pp. 32-3.

<sup>2</sup> One exception to this is the opinion of a contemporary scholar Muḥammad Abū Zahrah who, although a Ḥanafī follower, acknowledges al-Shāfi'ī's contribution and believes the latter should be credited with regard to *uṣūl al-fiqh*. See M. R. ʿUthmān, "al-Shāfi'ī *Wāḍi' ʿIlm al-Uṣūl*", p. 41.

<sup>3</sup> Muḥammad Abū Zahrah, *Uṣūl al-Fiqh*. p. 11. See also M. R. ʿUthmān, "al-Shāfi'ī-*Wāḍi' ʿIlm al-Uṣūl al-Fiqh*", p. 39.

<sup>4</sup> Hāshim Maʿrūf al-Ḥasanī, *Sīrat al-Aʿimmah al-Ithnā ʿAshar*. 1977. vol. II. Beirut: Dār al-Taʿāruf, p. 195.

<sup>5</sup> Al-Ḥasanī, p. 233.

foundations of the science of *uṣūl al-fiqh*. This was challenged by Muḥammad Abū Zahrah<sup>6</sup> in his *Uṣūl al-Fiqh* who refuted the claim for lack of substantial evidence.<sup>7</sup>

As regards the Ḥanafī *madhhab*, Ahmad Hasan<sup>8</sup> and Abū al-Wafā' al-Afghānī<sup>9</sup> claimed that prior to al-Shāfi'ī, Abū Yūsuf (d. 182H)<sup>10</sup> and Muḥammad b. Ḥasan al-Shaybānī, both disciples of Abū Ḥanīfah, were already engaged in the science of *uṣūl al-fiqh*. Al-Afghānī said,

"the first man to write or compile (*ṣannaḥa*) the science of *uṣūl al-fiqh* as far as we know was Abū Ḥanīfah al-Nu'mān. [For instance] he elucidates the methodologies of *istinbāṭ* in his '*Kitāb al-Ra'y*'. He was followed by his two disciples, Abū Yūsuf Ya'qūb b. Ibrāhīm al-Anṣārī and Muḥammad b. Ḥasan al-Shaybānī, then followed by Muḥammad b. Idrīs al-Shāfi'ī".<sup>11</sup>

In defending his theory, Ahmad Hasan refers to Ibn al-Nadīm's *Fihrist*<sup>12</sup> in which the latter lists the books written by Abū Yūsuf and al-Shaybānī which were among the lists of books on *uṣūl al-fiqh*. He further argues that the term '*uṣūl al-fiqh*' had been

<sup>6</sup> Abū Zahrah, *Uṣūl al-Fiqh*. p. 11.

<sup>7</sup> For more information on Shi'īs, see Heins Halm, *Shiism*. (Originally published in 1987 in German as *Die Schia* by Wissenschaftliche Buchgesellschaft, Darmstadt. Transl. by Janet Watson) 1991. Islamic Surveys Series, Edinburgh University Press; Moojan Momen, *An Introduction to Shi'ī Islam: The History and Doctrines of Twelver Shi'ism*. 1985. New Haven : Yale University Press, pp. 184-91 (under the title The Development of Shi'īs *Uṣūl al-Fiqh*).

<sup>8</sup> Ahmad Hasan, *The Early Development of Islamic Jurisprudence*. p. 179.

<sup>9</sup> M. R. ʿUthmān, "al-Shāfi'ī-*Wāḍi' ʿIlm al-Uṣūl*", p. 36 cites Abū al-Wafā' al-Afghānī in his *Introduction to Kitāb Uṣūl al-Sarakhsī*. vol. I. p. 3. Cf. Ṭāhā Jābir al-ʿAlwānī, "al-Shāfi'ī *Jāmi' Shatāt Uṣūl al-Fiqh wa Wāḍi' Qawā'id Tadwīnih*", p. 16 cites *Miftāḥ al-Sa'ādah*. vol. II, p. 37 and al-Makkī, *Manāqib al-Imām al-A'zam*. vol. II. p. 245.

<sup>10</sup> Al-Suyūṭī, *Ṭabaqāt al-Ḥuffāz*. p. 122.

<sup>11</sup> ʿUthmān, "al-Shāfi'ī-*Wāḍi' ʿIlm al-Uṣūl*", p. 36 cites al-Afghānī, *Introduction to Kitāb Uṣūl al-Sarakhsī*. vol. I, p. 3.

<sup>12</sup> Ibn al-Nadīm, *al-Fihrist*. p. 288.



used by Abū Yūsuf in his criticism of the scholars of Syria for their ignorance of *uṣūl al-fiqh*. According to Ahmad Hasan, the above reports indicate that scholars preceding al-Shāfiʿī and some other jurists had formulated the principles of law before him. Thus, the theory that al-Shāfiʿī was the first legal thinker who pioneered *uṣūl al-fiqh* appears to be incorrect and this needs to be explained.

The term '*uṣūl al-fiqh*' or '*uṣūl*' before al-Shāfiʿī's time did not carry its present connotation<sup>13</sup> nor had it acquired the technical meaning of the science dealing specifically with the sources of the law as defined by al-Shāfiʿī.<sup>14</sup> For example, Ibn al-Nadīm reports that Abū Yūsuf was the author of works on *uṣūl*. However, he immediately mentions that these books dealt with subjects such as prayer, fasting, sales and others.<sup>15</sup> Similarly al-Shaybānī is also alleged to have written books on *uṣūl*,<sup>16</sup> but they are immediately followed by prayer, alms tax and so on.<sup>17</sup>

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<sup>13</sup> Wael B. Hallaq, "Was al-Shāfiʿī the Master Architect of Islamic Jurisprudence?", *IJMES* 25 (1993), pp. 588-589.

<sup>14</sup> Majid Khadduri, *Islamic Jurisprudence Shāfiʿī's Risālā*, p. 40-1.

<sup>15</sup> Ibn al-Nadīm, *al-Fihrist*, p. 286.

<sup>16</sup> There are works of al-Shaybānī that seem to have dealt with *uṣūl al-fiqh*. They are *Kitāb Ijtihād al-Ra'y*, *Kitāb al-Istiḥsān* and *Kitāb Uṣūl al-Fiqh*. See Ibn al-Nadīm, *al-Fihrist*, p. 288.

<sup>17</sup> Ibn al-Nadīm, p. 287.

## 2.2 Al-Shāfi'ī's Achievement in Formulating the Principles of Islamic Jurisprudence

Schacht,<sup>18</sup> Coulson<sup>19</sup> and others acknowledged that al-Shāfi'ī had contributed greatly to Islamic jurisprudence. They regarded him as "the father of Muslim jurisprudence" or "the master architect of jurisprudence". His contribution to jurisprudence has been compared by his biographers to the work of Aristotle on logic and to that of al-Khalīl b. Aḥmad on prosody (*ʿarūḍ*).<sup>20</sup>

However, in the opinion of Hallaq,<sup>21</sup> *al-Risālah* was not the best work ever written on *uṣūl al-fiqh*. There are reasons as to why he believes so. Firstly, there was no such work in *uṣūl al-fiqh* proper in the ninth century following the death of al-Shāfi'ī. This means that there was a gap between the eighth and the tenth century. Hallaq argues that if *al-Risālah* was a very important book in *uṣūl al-fiqh*, there should have been commentaries or even criticism from those who disagreed with al-Shāfi'ī's formulation. Apparently, he argues, commentaries of *al-Risālah* only appeared in the tenth century.

However, such an argument does not imply that the *al-Risālah* was unimportant. It most probably indicates that the work was not yet widely known, for Ibn Qutaybah in his *Ta'wīl Mukhtalaf al-Ḥadīth* mentioned al-Shāfi'ī only once.

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<sup>18</sup> Schacht, *The Origins*. pp. 56, 59, 77, 79, 93, 134, 287, 314.

<sup>19</sup> Coulson, *A History of Islamic Law*. pp. 53, 61.

<sup>20</sup> Cf. Muḥammad Abū Zahrah, *al-Shāfi'ī*, p. 179.

<sup>21</sup> W. B. Hallaq, "Was al-Shāfi'ī the Master Architect of Islamic Jurisprudence", pp. 587ff.

Besides, Abu ʿUbayd did not mention al-Shāfiʿī at all whereas his and Ibn Qutaybah's work were among the important ones produced after al-Shāfiʿī.

Norman Calder, in his *Studies in Early Muslim Jurisprudence* agrees with Hallaq's theory. He further adds that al-Shāfiʿī's achievement in *uṣūl al-fiqh* was not unrecognised by Muslim authors but also had no tangible effects on juristic thought, perhaps before the beginning of the fourth century of Hijrah.<sup>22</sup>

### 2.3 Terms *Ibdāʿ*, *Waqʿ*, *Ta'sīs* and *Ikhtirāʿ* (Innovation, Pioneering, Founding and Inventional)

There is concern about the terms used to describe al-Shāfiʿī's contribution and his achievement in *uṣūl al-fiqh*. He is always described as the founder and pioneer of *uṣūl al-fiqh*. Some scholars, like al-Būṭī<sup>23</sup> do not agree totally with the use of such terms for he deems them inaccurate and improper. Instead, he suggests terms like *tadwīn*, *kitābah* and *taṣnīf*<sup>24</sup> (compilation, writing).

Al-Būṭī's suggestion arises because he claims al-Shāfiʿī was not the first to mention *uṣūl al-fiqh*. He argues that the usage of the term *uṣūl al-fiqh* had begun right

<sup>22</sup> Norman Calder, *Studies in Early Muslim Jurisprudence*. 1993. Oxford: Clarendon Press, p. 67.

<sup>23</sup> Muḥammad Saʿīd Ramaḍān al-Būṭī, "*Athar al-Shāfiʿī fī Manhaj al-Taḥkīm al-Islāmī-Qadīman wa Ḥadīthan*", paper presented in *International Seminar on al-Imām al-Shāfiʿī*, p. 2.

<sup>24</sup> Ḥājī Khalīfah in his *Kashf al-Zunūn ʿan Asmāʾ al-Kutub wa al-Funūn*. 1943. *Wakālah al-Maʿārif*, uses this term (*taṣnīf*) in describing al-Shāfiʿī's achievement in *uṣūl al-fiqh*. It is also used by Badr al-Dīn al-Zarkashī in *al-Baḥr al-Muḥīṭ* as cited by Mannāʿ al-Qattān, *al-Tashrīʿ wa al-Fiqh fī al-Islām Tāʾrīkhān wa Manhajān*. 6th ed., 1975. Beirut: Muʾassasat al-Risālah, pp. 306-7. While Ibn Khaldun, *al-Muqaddimah*, p. 455 uses word *kitābah* to describe it.

from the early days of Islam. According to him, al-Zarkashī<sup>25</sup> reported that Ibn ʿAbbās held to the principles of *ʿumūm* and *khuṣūs*, while others held fast to *dalālat al-mafhūm*. Moreover the *ḥadīth* of Muʿādh b. Jabal<sup>26</sup> was said to have explicitly indicated the hierarchical order of these arguments in Islam.<sup>27</sup>

Before al-Shāfiʿī, scholars had already used *uṣūl al-fiqh* to extrapolate rulings. However, they did not lay down the general rules (*qānūn kullī*).<sup>28</sup> Thus, when people before Aristotle, Khalīl b. Aḥmad and al-Shāfiʿī<sup>29</sup> mentioned the subjects of deriving rulings, they were discussing them on the basis of ideas and thought rather than its mechanisms. So, to a certain extent, the criticisms advanced by al-Būṭī and others seem to be quite correct, but it was al-Shāfiʿī who systematised the science of *uṣūl al-fiqh* and put it in written form, thus ensuring that specialists would not commit mistakes in deriving rulings (*istinbāt*).<sup>30</sup>

<sup>25</sup> Al-Būṭī, p. 2, citing al-Zarkashī, *al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*. vol.I, p. 5.

<sup>26</sup> The *ḥadīth* of Muʿādh b. Jabal is a well-known legal *ḥadīth* in the literature of Islamic jurisprudence. It lays down the guidelines for Muslims to derive rulings (*ḥukm*) in certain given circumstance. The hierarchical order of the proofs is the Qurʾān, the *sunnah* of the Prophet, and the *ijtihād*.

<sup>27</sup> Cf. Ibn Khaldūn, *al-Muqaddimah*. pp. 452-3.

<sup>28</sup> M. F. ʿUthmān, "al-Shāfiʿī *Wāḍiʿ*", p. 33.

<sup>29</sup> To trace the position of *uṣūl al-fiqh* in the early days of Islam see M. F. ʿUthmān, "al-Shāfiʿī *Wāḍiʿ* ʿIlm al-Uṣūl", pp. 26-32; Badrān, Abū al-ʿAynayn Badrān, *Uṣūl al-Fiqh al-Islamī*. pp. 5-11.

<sup>30</sup> Al-Būṭī, p. 1.

## CHAPTER THREE: THE POSITION OF ḤADĪTH

### 3.1 *Ḥadīth* in Islamic Law

Basically, the sources of Islamic law can be divided into two categories. First, the agreed and undisputed sources such as the Qur'ān, the *sunnah*, *ijmā'* and *qiyās*.<sup>1</sup> Second, the dispute among scholars as to whether certain other concepts can be used as a source of Islamic law.<sup>2</sup> These sources included such things as *Istiḥsān*, *Maṣaliḥ Mursalah*, *Istiḥāb*, *'Urf*, *Shar' man Qablanā*, *Qawl al-Ṣaḥābah* and *Sadd al-Dharī'ah*.

As a matter of fact the *sunnah* of the Prophet hierarchically becomes the second important source after the Qur'ān as seen in the *ḥadīth* of Mu'ādh b. Jabal and 'Umar's letter to Shurayḥ al-Qāḍī.<sup>3</sup> In this connection, al-Shāfi'ī clarifies this statement stating that the *sunnah* would only be the decisive argument when it is definitely confirmed as coming from the Prophet.

Throughout his works, al-Shāfi'ī on many occasions mentions the position of the *sunnah* in relation to the Qur'ān. It is obviously clear that the role of the *sunnah* is no more than an elucidation and explanation of the Qur'ān. In the *Risālah*, the details of these roles are discussed at length.

<sup>1</sup> Badrān, *Uṣūl al-Fiqh al-Islāmī*. pp. 47, 55-193.

<sup>2</sup> Badrān, *Uṣūl al-Fiqh al-Islāmī*. pp. 195-236.

<sup>3</sup> Ibn al-Qayyim, *Flām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*. Ed. Muḥammad 'Abd al-Salām. 191. Beirut: Dār al-Fikr, vol. I, p. 282; al-Shātibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*. n.d. Beirut: Dār al-Kutub al-'Ilmiyyah, vol. II, p. 2.

### 3.3.1 The Role of *Sunnah*

The *sunnah* of the Prophet plays an important role in expounding Sharī'ah, in particular its relation with the Qur'ān. In this regard, al-Shāfi'ī divides the roles of *sunnah* into five categories.<sup>4</sup> Below are some examples.

#### 3.1.1.1 *Sunnah* Explains the Qur'ān

With regard this role, al-Shāfi'ī cites al-Qur'ān, *al-Mā'idah*: 6,

"when you stand up for the prayers, wash your faces and your hands up to the elbows, and wipe your heads and your feet up to the ankles; and if you are polluted (*junuban*) purify yourselves".

This verse clearly demonstrates the requirement of *wuḍū'* and how to perform it. Again, it clarifies that *janābah* necessitates *ghusl* (major bath).

However, there are a few questions which need to be answered. *Al-Mā'idah*: 6 does not indicate the number or frequency which is sufficient for washing the face and other parts. What is the minimum number of times of washing? And are the ankles and elbows included as parts which are required to be washed? In this regard, the Prophet's *sunnah* gives clear guidance to Muslims. According to al-Shāfi'ī, it is derived from the Prophet's deeds that the minimum washing of the face and other parts is once. For, he argues, the Prophet established different *sunnahs* for that matter. At one time, he did wash only once, and on another occasion three times.<sup>5</sup>

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<sup>4</sup> See the discussion of *al-Risālah* in Chapter Four.

<sup>5</sup> *Al-Risālah*. p. 162-3.

Ibn ʿAbbās reported that the Prophet made his *wuḍūʾ* by washing or wiping once (*annahū tawaḍḍaʾa marratan marratan*).<sup>6</sup> In another *ḥadīth*, the Prophet acted slightly differently. ʿAmr b. Yaḥyā one day asked ʿAbd Allāh b. Zayd to show him how the Prophet made his *wuḍūʾ*. "The Prophet washed his hands twice, then rinsed his mouth (*maḍmaḍa*) and sneezed three times. He washed his face three times and then washed his hands up to the elbows twice. Then he wiped his head with his hands starting from the forehead and then from the back of his head up to his neck (*qafā*). Then he brought his hands back to the point from which he started. And finally, he washed his feet".<sup>7</sup>

These different actions imply that the minimum washing which is sufficient is once. Washing three times for each of the required parts of the body is an option.<sup>8</sup>

### 3.1.1.2 *Sunnah* and Abrogation

Amongst the most significant of al-Shafīʿī's theories in Islamic jurisprudence is the theory of *naskh* (abrogation). The Qurʾān, according to him, can be only abrogated by Qurʾān, not by *sunnah*, because the later is subordinate to the former in terms of expounding what the Qurʾān has.<sup>9</sup>

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<sup>6</sup> The *isnād* of this *ḥadīth* as follows; ʿAbd al-ʿAzīz b. Muḥammad - Zayd b. Aslam - ʿAṭāʾ b. Yasār - Ibn ʿAbbās - the Prophet. See *al-Risālah*, p.162.

<sup>7</sup> *Al-Risālah*, pp. 162-3.

<sup>8</sup> *Al-Risālah*, p.29.

<sup>9</sup> *Al-Risālah*, p. 106.

In order to defend the theory, he adduces a number of Qur'ānic verses to show that the Prophet was incapable of substituting any laws given by Allāh,<sup>10</sup> and also to demonstrate that the abrogation of Qur'ān would not happen except by another similar verse of the Qur'ān.<sup>11</sup>

Again, in the theory of *naskh*, the *sunnah* of the Prophet would not be abrogated by Qur'ān, but by *sunnah* itself.<sup>12</sup> In other words, al-Shāfi'ī endeavours to establish the concept of equivalence (*mithl*) of *naskh*. This means that only the similar strength of proof can abrogate. The ones which are either of higher or lower proof cannot abrogate others.

The abrogation of verses in Qur'ān did happen as indicated by the *sunnah*. Evidence of this can be found in many places in the Qur'ān, but what about the *sunnah*?

This question arises because there is doubt as to whether people can find an abrogating *sunnah* after the Prophet's demise. Although some people say that such *sunnah* might have been abrogated, the abrogating *sunnah* cannot be traced. Al-Shāfi'ī rejects the possibility of such a case happening, because once the abrogation of a certain *sunnah* takes place, another *sunnah* will have been instituted by the Prophet.<sup>13</sup>

Having established the theory of equivalence, al-Shāfi'ī sticks to it. He rejects the possibility that *sunnah* (which is lower compared to the Qur'ān) is ever abrogated

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<sup>10</sup> *Al-Risālah*. p. 107; *Yūnus*: 15.

<sup>11</sup> *Al-Risālah*. p. 108; *al-Baqarah*: 106.

<sup>12</sup> *Al-Risālah*. p. 108.

<sup>13</sup> *Al-Risālah*. pp. 108-9.



by Qur'ān. If an earlier *sunnah* is abrogated, the Prophet as commanded by Allāh will institute another *sunnah*, indicating to people that the later *sunnah* is a new ruling which abrogates the earlier one.<sup>14</sup> Thus, we would like to show some cases where *sunnah* indicates that certain verses (or rulings) of the Qur'ān are considered as abrogated and abrogating.

**a. The Qur'ān, *al-Muzzammil*: 1-20**

After mentioning Allāh's order of *qiyām al-layl* of a certain amount of the night, al-Shāfi'ī says that it is evident from the Qur'ān that the commandment of doing *qiyām al-layl* of whatever amount has been abrogated by the verse "*fatahajjad bihi nāfilatan lak*". As far as this *āyah* is concerned, there are two possible interpretations.<sup>15</sup> By referring to the *sunnah* of the Prophet, it is found that there is no obligatory *ṣalāt* except the five daily prayers. Therefore, only five *ṣalāt* are obligatory to Muslims. Others which were *wājib* are abrogated by this requirement. This is on the basis of the verse "*fatahajjad bihi nāfilatan lak*". It abrogates the imposition of *qiyām al-layl*.<sup>16</sup>

There is a *ḥadīth* which corroborates this as related by Ṭalḥah b. 'Ubayd Allāh.<sup>17</sup> A beduin of Najd asked the Prophet about Islam. In reply, the Prophet mentioned five daily *ṣalāt* as one of the requirements. Then that beduin asked whether

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<sup>14</sup> *Al-Risālah*, p. 110.

<sup>15</sup> *Al-Risālah*, p. 115.

<sup>16</sup> *Al-Risālah*, pp. 115-6.

<sup>17</sup> This *isnād* is Mālik - Abū Suhayl b. Mālik - his father.

there were other prayers which are imposed upon him to which the Prophet replied in negative, except if he could perform optional *ṣalāt* voluntarily.<sup>18</sup>

Again, ʿUbādah b. al-Ṣāmit reported that the Prophet said: "five *ṣalāt* which Allāh has prescribed upon His creatures. He who performs them without negligence, Allāh has promised to cause him enter into *jannah*".<sup>19</sup>

### **b. Punishment of *Zinā***

The Qur'ān, *al-Nisā'*: 15 and 16 indicate that the punishment for those who were involved in adultery (*zinā*) is *ḥabs* (detention in custody) and *adhā* (punishment). However, this *ḥadd* punishment is abrogated by the verse of the Qur'ān, *al-Nūr*: 2 (*al-zāniyah wa al-zānī fajlidū kull wāhid minhum mi'at jaldah*). It clearly shows that that *ḥadd* for those who are involved in *zinā* is flogging with a hundred lashes. A question arises here about this punishment for there is a difference between adultery (*zinā muḥṣan*) and fornication (*zinā ghayr muḥṣan*).

With reference to this issue, the *sunnah* of the Prophet elucidates that a hundred lashes are applicable to those who are not married (*ghayr muḥṣan- al-zāniyayn al-bikrayn*).<sup>20</sup> This is derived from a *ḥadīth* of ʿUbādah b. al-Ṣāmit that the Prophet said:

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<sup>18</sup> *Al-Risālah*. p.116.

<sup>19</sup> It is related by Mālik in *Muwatta' Riwayat Yahyā* (I: 144-45) Mālik - Yahyā b. Saʿīd - Muḥammad b. Yahyā b. Hibbān - ibn Muḥayriz - ʿUbādah.

It is also related by Abū Dāwūd (I: 534) on the authority of al-Qaʿnabī - Mālik. This is categorised as *ṣaḥīḥ* by Ibn ʿAbd al-Barr and others. See *al-Risālah*. note. pp. 117.

<sup>20</sup> *Al-Risālah*. p. 129.

"take from me, take from me. Indeed Allāh has made a solution for them; a virgin with a virgin [is to be flogged] hundred lashes and to be expelled one year ( *taghrīb ʿām*), a married man with a married woman [is to be flogged] hundred lashes and to be stoned (*rajm*)".

From this *ḥadīth*, it is obvious that the *ḥadd* punishment of a hundred lashes is applied to *bikrayn ḥurrayn*, but it does not apply to *thayyibayn*. Instead, *rajm* (stoning) is applicable to *thayyibayn ḥurrayn*. This conclusion is derived from the *sunnah* of the Prophet in the case of Māʿiz b. Mālik al-Aslamī and the case of a woman from the Aslami's tribe. The Prophet himself in the case of Māʿiz stoned the former who was involved in *zinā* and did not flog him. Again, the Prophet in the case of the woman who was also involved in adultery, for which there was no evidence against her except her confession, asked Unays b. al-Ḍaḥḥāk al-Aslamī to implement the *rajm* punishment if she admitted to being involved in adultery.<sup>21</sup>

### c. Abrogated and Abrogating Verses which Are Indicated by *Sunnah*

The Qurʾān, *al-Baqarah*: 180 and 240 have two possibilities. Either (i) they verify the provision of *waṣiyyah* (bequest) for parents, relatives and wife-husband and corroborate the provision of inheritance (*mīrāth*) together with *waṣiyyāh*, or (ii) the verses of *mīrāth* are considered as abrogating the provision of *waṣiyyāh* to the above mentioned groups.

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<sup>21</sup> *Al-Risālah*, p. 132.

Al-Shāfi'ī's method of verification stresses that if there are different possibilities of interpretation available, it is inevitable that we seek indications of what is more likely, firstly in the Qur'ān and then followed by *sunnah*.<sup>22</sup>

With regard to this matter, al-Shāfi'ī refers to a *ḥadīth* "*lā waṣiyyah li wārith*" which the Prophet was claimed to have said during *ʿām al-fath* (the year of victory) or in the sermon of farewell pilgrimage (*ḥajjat al-wadāʿ*), which al-Shāfi'ī classifies as a *mutawātir lafzī ḥadīth* (transmission of many from many).<sup>23</sup> Therefore, on the basis of this *ḥadīth*, he concludes that the verses of *mīrāth* abrogate the provision of *waṣiyyah* to parents and partners (husband or wife).

However, as far as the *isnād* of the above *ḥadīth* is concerned, al-Shāfi'ī himself once admitted that it was a *khbar munqatīʿ*.

### 3.1.1.3 *Sunnah* Restricts the General Sense of the Qur'ān

Verses 11, 12 and 76 of *al-Nisā'* are considered as the basis for inheritance in Islam. The inheritors as the Qur'ān mentions are general. By the indication of *sunnah*, not all of inheritors are entitled to inherit. There are certain conditions to be fulfilled. Criteria as deduced from the *sunnah* are,

- i. both beneficiary (*wārith*) and benefactor (*muwarriṭh*) must be of the same religion;

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<sup>22</sup> *Al-Risālah*, pp. 138-9.

<sup>23</sup> *Al-Risālah*, p. 192.

- ii. both must be residents of *dār al-Muslimīn* or of states who have treaties with the Muslims;
- iii. both must be free men (*ḥurr*) in Islam;
- iv. the *wārith* must not be the murderer of the *muwarrith*.

All these particulars which need to be fulfilled first by the inheritors in order to be eligible for inheritance are derived from the *sunnah* of the Prophet. The authority of the *ḥadith* is as follows:

- a. Sufyān - al-Zuhrī - °Alī b. Ḥusayn - °Umar b. °Uthmān - Usāmah b. Zayd. The Prophet said: "A Muslim cannot inherit from a non-believer and a non-believer cannot inherit from a Muslim".  
(*lā yarith al-muslim al-kāfir wa lā al-kāfir al-muslim*)
- b. Ibn °Uyaynah - Ibn Shihāb - Sālim - °Abd Allāh. The Prophet said: "He who sells a slave(man) while the latter has his own property, then his property will be owned by the seller unless the buyer stipulates otherwise".
- c. Mālik - Yahyā - Sa°īd - °Amr b. Shu°ayb, the Prophet said: "A murderer inherits nothing"  
(*lays li qātil shay'*).

### 3.2 THE POSITION OF ḤADĪTH BEFORE AL-SHĀFI'Ī'S TIME

The discussion of the position of *ḥadīth* prior to al-Shāfi'ī's time will be presented in stages. They are as follows.

#### 3.2.1 The Position of Ḥadīth in the Prophet's Time

The Prophet has a special privilege in the eyes of the Muslim community. In his life time, he was the only authentic source of law are the Qur'ān and his

*ḥadīth/sunnah*. Other than these are subject to the Prophet's verification. For instance, in the absence of any rulings either from the Qur'ān or *ḥadīth*, Companions in such cases would exercise their *ijtihād* to seek out the most appropriate ruling. And then, when they went to the Prophet, they would tell him what had happened. The Prophet, in this situation would confirm whether their *ijtihād* was right or wrong.

During this time, the *ḥadīth* of the Prophet constituted an approved source of law. Upon sending Mu'ādh b. Jabal to Yaman, the Prophet asked him: "How are you going to judge the matters? He said, "I will judge according to Allāh's Book". Then the Prophet asked again, "what are you going to do if you find nothing in Allāh's Book?". Mu'ādh replied: "I will judge in accordance to the *sunnah* of Allāh's Messenger". The Prophet asked: "what would the situation be like if there is nothing either in Allāh's Book nor in the *sunnah*?". Mu'ādh replied, "I will try to do my best to form an opinion (*ajtahidu*) and spare no pains". Upon hearing this answer, the Prophet was very satisfied.<sup>24</sup>

Having cited the above *ḥadīth*, it is clear that the sources of law at that time were the Qur'ān, *sunnāh* and *ijtihād*.

There are many ways in which the Companions received *ḥadīths* from the Prophet. They may have directly heard from the Prophet himself, or the ones who were absent may have asked those who were present in the Prophet's circle.

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<sup>24</sup> Cf. al-Shāṭibī, *al-Muwāfaqāt*. vol. IV. p. 6.

### 3.2.2 The Position of *Ḥadīth* in the Time of the Companions

During this period, compiling the *sunnah* or *ḥadīth* of the Prophet did not gain as much attention from the Muslims as the Qur'ān did. This could easily be understood for there had apparently been contradictory *ḥadīths* of the Prophet as regards the writing down of his *ḥadīth*.<sup>25</sup> Some reports allowed Muslims to record them in writing while others disallowed this.<sup>26</sup>

A few cases reported by the Companions revealed the prevalence of a negative attitude even towards the narration of *ḥadīth*. For instance, 'Umar b. al-Khaṭṭāb<sup>27</sup> was reported to have detained three Companions, i.e. Ibn Mas'ūd, Abū al-Dardā' and Abū Mas'ūd al-Anṣārī for narrating too many *ḥadīth* from the Prophet.<sup>28</sup> His measure was

<sup>25</sup> As far as writing down *ḥadīths* in the early year of Islam is concerned, most authors believe that *ḥadīths* were only transmitted orally. However, this common understanding is challenged by al-A'zamī in his *Studies in Early Ḥadīth Literature*. 2nd. ed. Indiana: American Trust Publication, 1978. He proves that *ḥadīths* were already documented in early Islam. Reports of *al-Awā'il* show that Companions like 'Abd Allāh b. 'Amr al-Āṣ, 'Alī b. Abī Tālib and others had *ṣaḥīfahs*. See also Muḥammad Ḥamīdullāh, *The Earliest Extant Work on the Ḥadīth: Ṣaḥīfah Hammām ibn Munabbih*. Tran. into English Muhammad Rahimuddin. 10th ed. 1979; 'Abd al-Mu'tī Amīn Qal'ajī, *His Introduction to al-Sunan al-Ma'thūrah li al-Shāfi'ī*. 1986. Beirut: Dār al-Ma'rifah, p. 15.

<sup>26</sup> For details of these apparent contradictory *ḥadīths* and how scholars try to reconcile them, see al-Khaṭīb al-Baghdādī, *Taqyīd al-ʿIlm*. Edit. Yūsuf al-ʿIsh. 1949. Damascus: al-Ma'had al-Firansī, pp. 29-114; al-A'zamī, *Studies in Early Ḥadīth Literature*. pp. 20-7; Muḥammad Zubayr Ṣiddiqī, *Ḥadīth Literature Its Origin, Development and Special Features*. Ed. Abdal Hakim Murad. 1993. Cambridge: The Islamic Texts Society, pp. 24-27.

<sup>27</sup> Abū Zahrah, *al-Shāfi'ī*, p. 66.

<sup>28</sup> Al-Qāḍī Abū Bakr b. al-ʿArabī, *al-ʿAwāsim min al-Qawāsim fī Taḥqīq Mawāqif al-Ṣaḥābah ba'd Wafāt al-Nabī*. Ed. Muḥibb al-Dīn al-Khaṭīb. n.d. Kuwait: Maktabat al-Ṣaḥābah al-Islāmiyyah, p. 62. The report that 'Umar detained three Companions, Ibn Mas'ūd, Abū al-Walā and Abū Dharr is considered as *mursal ḥadīth* by Ibn Ḥazm for the transmitter, 'Abd Allāh b. 'Awf had not heard it directly from 'Umar, Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*. 1927, Cairo, vol. II. p. 134. See also Muḥammad al-Khuḍarī Bek, *Tārīkh al-Tashrīf al-Islāmī*, p. 91.

applied to ensure that the people were not confused between the Qur'ān and the *ḥadīth* of the Prophet.<sup>29</sup>

On the other hand, the *sunnah* is very important for making certain decisions. The common practice was to find a ruling first in the Qur'ān. If nothing was available, one is permitted to have recourse to the *sunnah* or subsequently exercise *ijtihād*. Many occurrences showed that prominent Companions like Abū Bakr, ʿUmar, ʿAlī and their likes asked others about *ḥadīth* from the Prophet.<sup>30</sup> The case of a grandmother's right to inheritance (*mīrāth al-jaddah*) is very significant.<sup>31</sup> Abū Bakr was not aware of any provision allocated to a grandmother either in the Qur'ān or the *Sunnah*. It was one of the Companions, al-Mughīrah, who brought to his attention that the Prophet had allocated a one-sixth share to her.

It was also common practice among the Companions to ask for witnesses prior to accepting a *ḥadīth*. In the said case of *mīrāth al-jaddah*, Abū Bakr requested a witness to support al-Mughīrah. ʿUmar did the same in the case of *isti'dhān* (asking permission to enter one's house by saying *al-salām ʿalaykum*). These instances did not indicate that Abū Bakr and ʿUmar doubted the *ʿadālah* and credibility of the *ḥadīth* narrator, but they resorted to witnessing as a verifying method. ʿAlī's practice, however, was different. He instead asked the narrators to swear an oath.

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<sup>29</sup> ʿUmar was reported by Qarazah b. Kaʿb to have warned his troop in Irāq not to narrate too many *ḥadīth* from the Prophet for his fear that the people were not good in reciting the Qur'ān. He, therefore warned them not to further burden the people with the *ḥadīth*. See Muḥammad al-Khuḍarī Bek, *Tāʾrīkh al-Tashrīʿ*, p. 91.

<sup>30</sup> Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, vol. II, p. 134; Ibn Taymiyyah, *Rafʿ al-Malām ʿan al-Aʿimmah al-Aʿlām*, Ed. Zuhayr al-Shāwīsh, 2nd. ed. 1983, Beirut: al-Maktab al-Islāmī, pp. 14-20.

<sup>31</sup> See Chapter Five: *Khabar al-Wāḥid* below.



The *sunnah* of the Prophet itself formed a basis for *ijtihād* or deriving rulings. The Companions were unanimously agreed on the need to adhere to it if they were convinced of the trustworthiness of the narrators. In any case, they would first look for clear rulings in the Qur'ān. If there were one, they would issue judgement on the basis of Qur'ānic source. If the Qur'ān was silent, they would refer to the *sunnah* of the Prophet, and failing to discover it, they would ask whether or not anyone was aware of any judgement made by the Prophet.<sup>32</sup>

In the case of nothing found from these two principal sources, Companions would exercise their *ijtihād*.<sup>33</sup> For instance, upon his appointment of Shurayḥ as a *qādī* at Kūfah, 'Umar was reported to have addressed him saying,<sup>34</sup>

"Look at what is obvious to you from the Qur'ān and do not ask anyone else about it. What is ambiguous to you, follow the *sunnah* of the Messenger of Allāh. [However] what is not clear to you from the *sunnah*, apply your reasoning (*ijtihād al-ra'y*)".<sup>35</sup>

### 3.2.3 The Position of *Ḥadīth* in the Time of the *Tābi'īn*

Among outstanding features during this period are:

- i. the spreading of *ḥadīth* transmission,
- ii. the falsification of *ḥadīth* from the Prophet, and

<sup>32</sup> Abū Zahrah, *al-Shāfi'ī*, p. 64.

<sup>33</sup> In issuing *fatwās*, some Companions preferred to exercise their *ijtihād* rather than narrating *ḥadīth* from the Prophet. By doing so, they hoped they would not unintentionally misreport the Prophet. See Abū Zahrah, *al-Shāfi'ī*, p. 65.

<sup>34</sup> Shāh Walī Allāh al-Dahlawī, *Hujjat Allāh al-Bālighah*. 1355H. Cairo: Dār al-Turāth, vol. I, p. 149.

<sup>35</sup> Muḥammad al-Khuḍarī Bek, *Tārīkh al-Tashrī' al-Islāmī*, p. 96; Abū Zahrah, *al-Shāfi'ī*, p. 64.

iii. the conflict between *ahl al-ḥadīth* and *ahl al-ra'y*.

The majority of the Companions during this period held to the view that the *sunnah* is complementary (*mukmilah*) to the Qur'ān. It was 'Umar b. 'Abd al-'Azīz who in year 100 of the Hijrah realised the necessity for the compilation of the *sunnah* of the Prophet. He who feared the loss of the Qur'ān was equally worried that *ḥadīth* (*'ilm*) would be lost by the death of the *'ulamā'*.

### 3.2.4 The Position of *Ḥadīth* in the Time of the *Tābi' al-Tābi'in*

By this time, the disagreement between the *ahl al-ra'y* and the *ahl al-ḥadīth* became obvious and serious. This phenomenon was discussed previously in the Introduction of this thesis.

## 3.3 *Ḥadīth* in the Attitude of the Ancient Schools

The attitude of the ancient schools toward *ḥadīths* will be discussed below.

### 3.3.1 Madīnan School

Mālik is reported to have held to *munqatī'*, *mursal*, *mawqūf ḥadīths* and *'amal ahl al-Madīnah*.<sup>36</sup> Al-Shātibī in *al-Muwāfaqāt* mentions Mālik's views on *ḥadīth* as well as the *fuqahā'* of Hijāz. Mālik is reported to have rejected some *ḥadīths* as contradicting the Qur'ān, other *ḥadīth* or general principles (*aṣl kullī*, e.g. *raf' al-ḥaraj* (lifting the difficulty)). As far as *khavar al-wāḥid* is concerned, al-Shātibī cited Ibn

<sup>36</sup> Ibn al-Qayyim, *I'lām al-Muwaqqi'in*. vol. I. p. 26; Muḥammad Abu Zahrah, *al-Shāfi'i*. p. 71.

al-<sup>c</sup>Arabī that Mālik had two views on it. He would follow a *khavar al-wāḥid* if it is supported by other principles (*qā'idah*). If there is only *khavar al-wāḥid* in a given case, he would not take it into consideration.

As far as contradiction between *ḥadīth* and other principles is concerned, Mālik, for example rejected the *ḥadīth* of *wulūgh al-kalb* (the dog's lick) claiming that it opposes two principles. One of them is the Qur'ān<sup>37</sup> in which Allāh orders Muslims to eat what the dogs had caught.

According to Mālik, the *'amal ahl al-Madīnah* is given precedence over *qiyās* and even over sound *ḥadīths* if their *'ulamā'* have agreed upon a certain case. And also *'amal* of *ahl al-Madīnah* is given priority over *khavar al-wāḥid*. The reason for this is that *'amal* in their eyes is in the position of transmission of many from many. If *khavar al-wāḥid* contradicts it, according to their preferred opinion, it will be *mansūkh*.<sup>38</sup>

### 3.3.2 The Iraqi School

Owing to the wide-spread falsification of *ḥadīths* during this period, scholars had difficulty in deriving rulings, for the falsification made it more difficult to scrutinize sound *ḥadīths* and to take them as a basis for arguments and for deriving

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<sup>37</sup> *Al-Mā'idah*: 4.

<sup>38</sup> Aḥmad Naḥrāwī <sup>c</sup>Abd al-Salām, *al-Imām al-Shāfi'ī fī Madhhabayh al-Qadīm wa al-Jadīd*. 1988. n. p. pp. 195; cf. Aḥmad Amīn, *Duḥā al-Islām*. 6th ed. 1956. Cairo: Maktabat al-Nahḍah al-Misriyyah, vol.II, p. 212.

legal rulings. This phenomenon, argues Muḥammad al-Khuḍarī Bek,<sup>39</sup> led to the questions of:

i. is *sunnah* a source (*asḥl*) of Islamic jurisprudence, complementing the Qur'ān?

And if so,

ii. What are the means to verify and rely on?

In his writings, such as *Jimā' al-ʿIlm*, al-Shāfi'ī alluded to the existence of a group of anti- traditionists who rejected all the *ḥadīth*. They, the so-called *ahl al-Qur'ān*, relied only on the Qur'ān.<sup>40</sup>

They seem to reject *akhbār* because they do not engender definite knowledge given the possibility of error and forgetfulness on the part of its narrators. They do not repudiate the *sunnah* of the Prophet as the precedent of the Prophet. In fact, if it were to come through ways which engender definite knowledge, for instance *sunnah mutawātirah*, they would accept it.

As far as Abū Ḥanīfah is concerned, he in most cases holds to *qiyās al-ra'y* and restricts the scope for *sunnah*. He would not accept it except upon the fulfilment of certain conditions and would subject it to thorough investigation. For instance, *ḥadīth* should be well known among *thiqāt*, or it is related from *ʿāmmah* and the *fuqaha'* of the cities should be agreed upon on its *ʿamal* and none of the Companions should oppose that *ḥadīth*.<sup>41</sup>

<sup>39</sup> Muḥammad al-Khuḍarī Bek, *Tārīkh al-Tashrīʿ al-Islāmī*. pp. 153-155.

<sup>40</sup> Al-Shāfi'ī, *Jimā' al-ʿIlm*. Ed. Aḥmad Muḥammad Shākir. 1940. Cairo: Maṭbaʿat al-Maʿārif, pp. 13-44.

<sup>41</sup> Aḥmad Amīn, *Duḥā al-Islām*, vol. II, p. 175; Naḥrāwī, *al-Imām al-Shāfi'ī*, p. 188; al-Sibā'ī, *al-Sunnah wa Makānatuhā fī al-Tashrīʿ al-Islāmī*. 4th ed. 1985, Beirut: al-Maktab al-Islāmī, p. 404.

There were fewer *ḥadīths* of the Prophet available in Irāq than in the Hijāz. Despite this fact, they still needed to be scrutinized due to the spread of forged *ḥadīths*<sup>42</sup> created by proponents of the different schools of thought such as the Mu'tazilah, the Shī'ah, the Murji'ah and others.<sup>43</sup> Therefore, Abū Ḥanīfah takes a cautious approach to accepting *ḥadīths*. He accepts *ḥadīths* on strict conditions and prefers to practise *qiyās* and *istiḥsān* (juristic preference) rather than follow *ḥadīths* whose validity he doubts.<sup>44</sup>

In this respect, al-Shāfi'ī disagrees with Abū Ḥanīfah. The latter in certain cases contradicts what al-Shāfi'ī understands to be the *sunnah* of the Prophet because certain *ḥadīths* had not yet reached him. According to al-Shāfi'ī, if those *ḥadīths* reached his followers, it is compulsory for them to refer to the *ḥadīths* and there is no excuse for abandoning them.<sup>45</sup>

As far as the method in deriving rulings is concerned, Abū Ḥanīfah is reported to have said: "I follow the Book of Allāh, and then the *sunnah* of His Prophet. If there is no answer to the matter in question in either of them, I follow one of the Companions' decisions restricting myself to them. But when the matter is only dealt

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<sup>42</sup> This phenomenon begins in the year 41H up to the early second century of Hijrah and the phase is classified by Muḥammad al-Khuḍarī Bek as the third stage of *tashrī'* which also includes the younger Companions (*Ṣiḡḥār al-Ṣaḥābah*) and those Successors who met them. See Muḥammad al-Khuḍarī Bek, *Tārīkh al-Tashrī' al-Islāmī*, p. 114.

<sup>43</sup> Nahrāwī, *Al-Imām al-Shāfi'ī*, p. 190; Muḥammad al-ʿAbdah, *al-Mu'tazilah Bayn al-Qadīm wa al-Ḥadīth*. 1987. Birmingham: Dār al-Arqam, p. 82..

<sup>44</sup> Nahrāwī, p. 190.

<sup>45</sup> Al-Bayhaqī, *Manāqib al-Imām al-Shāfi'ī*, p. 12; Aḥmad Nahrāwī, *al-Imām al-Shāfi'ī*, p. 191. Al-Bayhaqī mentioned several cases in which Abū Yūsuf and Muḥammad b. al-Ḥasan refer back to the *sunnah*, such as the case of *waqf*, *takbīr fī al-ʿīdayn*, *sahm al-fāris* etc.

with by Ibrāhīm, al-Shaʿbī, Ibn Sīrīn, al-Ḥasan or others, I will apply my own *ijtihād* as they did".<sup>46</sup>

Abū Ḥanīfah also holds to the authoritativeness of *mursal ḥadīths* if they are transmitted and narrated by reliable and trustworthy persons.<sup>47</sup>

### 3.3.3 *Ahl al-Kalām*

Before we begin with *ahl al-kalām* with regard their view on *ḥadīth*, it is noteworthy to define first the word "*al-kalām*". *Kalām*, literally means "word", "speech", but quickly acquired senses of "conversation, discussion, controversy".<sup>48</sup> While *ʿilm al-kalām* is defined as the science which is concerned with firmly establishing religious beliefs by adducing proofs and with banishing doubts.

#### 3.3.3.1 *Ahl al-Kalām* in al-Shāfiʿī's Writings

Regarding the term *ahl al-kalām* which appears several times in al-Shāfiʿī's writings, particularly *Jimāʿ al-ʿIlm*, scholars are uncertain as to the actual addressee. *Ahl al-kalām* in this discussion are those whom al-Shāfiʿī mentions in *Jimāʿ al-ʿIlm* who reject the *akhbār* altogether, namely, *khavar al-khāṣṣah* and *khavar al-ʿāmmah*.

According to Abū Zahrah<sup>49</sup> and Muḥammad al-Khuḍarī Bek,<sup>50</sup> *ahl al-kalām* who

<sup>46</sup> Al-Suyūṭī, *Miftāḥ al-Jannah fī al-Ihtijāj bi al-Sunnah*. Ed. al-Sayyid al-Jumaylī. 1985. Cairo: Maṭbaʿat al-Thāqāfah al-Dīniyyah, p. 53; al-Ḥajawī, *al-Fikr al-Sāmī fī Tāʾrīkh al-Fiqh al-Islāmī*. n.d. al-Madīnah al-Munawwarah: al-Maktabah al-ʿIlmiyyah, vol. I. p. 354.

<sup>47</sup> See Muṣṭafā al-Sibāʿī, *al-Sunnah wa Makānatuhā fī al-Tashrīʿ al-Islāmī*. p. 404.

<sup>48</sup> Cf. A. J. Wensinck, *The Muslim Creed*. 1932, p. 79.

<sup>49</sup> Abū Zahrah, *al-Shāfiʿī*. p. 155.

appears in *Jimā' al-ʿIlm* are most probably the Muʿtazilah.<sup>51</sup> To support their thesis, they adduce proofs that al-Shāfiʿī had ascribed those people, i.e. *ahl al-kalām*, who rejected the *akhbār* to Baṣrah. And Baṣrah at that time was a centre of *ahl al-kalām*. They were also known as the opponents of *ahl al-ḥadīth*. In his *Taʿwīl Mukhtalaf al-Ḥadīth*, Ibn Qutaybah mentions that amongst *ahl al-kalām* were al-Jāḥiẓ, al-Nazzām and others, who had accused *ahl al-ḥadīth* of narrating contradictory *ḥadīths* and those which contradict logic and reasons.<sup>52</sup>

In his *Origins of Muhammadan Jurisprudence*, Joseph Schacht is very firm about *ahl al-kalām*. To him, *ahl al-kalām* in al-Shāfiʿī's term is used for the Muʿtazilah.<sup>53</sup> They were also known in Ibn Qutaybah's term as *ahl al-naẓar wa al-qiyās*, meaning adherents of systematic reasoning, rationalists.<sup>54</sup> And again in al-Masʿūdī and al-Ashʿarī, the term are known respectively as *ahl al-baḥṭh wa al-naẓar* and *mutakkalimūn*.<sup>55</sup>

According to Schacht, those who reject all *ḥadīths* are the same as the *ahl al-kalām*, which is al-Shāfiʿī's term for the Muʿtazilah. Again, Schacht elaborates that those

<sup>50</sup> Muḥammad al-Khuḍarī, *Tārīkh al-Tashrīʿ al-Islāmī*, pp. 155-7.

<sup>51</sup> Cf. Zakī al-Dīn Shaʿbān, *Uṣūl al-Fiqh*. n.d. Dār al-Nāfiʿ li al-Ṭibāʿah wa al-Nashr, p. 60.

<sup>52</sup> Ibn Qutaybah, *Taʿwīl Mukhtalaf al-Ḥadīth*. n.d. Beirut: Dār al-Kitāb al-ʿArabī, pp. 5, 12, 42, 59.

<sup>53</sup> J. Schacht, *The Origins*. pp. 41, 128, 259.

<sup>54</sup> Ibn Qutaybah, *Taʿwīl Mukhtalaf al-Ḥadīth*. passim; Schacht, *The Origins*. p. 128.

<sup>55</sup> See Schacht, *The Origins*. pp. 288ff.

who reject all *ḥadīths* are the extreme wing of the anti-traditionists,<sup>56</sup> while the moderate wing is represented by those who reject the *khābar al-khāṣṣah*. It is not surprising, therefore, that in some literature we do find that some of the al-Muʿtazilah accept *khābar al-wāḥid*.

Regarding the extreme wing, their arguments against *ḥadīths* and in favour of the Qur'ān as they appear in *Jimā' al-ʿIlm* are that the (i) the Qur'ān explains everything<sup>57</sup> and (ii) the Qur'ān must not be interpreted in the light of *ḥadīths*; no individual authority for the *ḥadīths* is reliable, and a man may challenge traditions without becoming an unbeliever. On this basis, they rejected all *ḥadīths*.<sup>58</sup>

Furthermore, according to al-Shāfi'ī's opponents, there are two schools of thought among his companions (*ahl al-kalām*);

- i. some confined themselves strictly to the Qur'an,<sup>59</sup>
- ii. others accepted only explanatory *hadīths* on subjects mentioned in the Qur'an.

<sup>56</sup> Schacht, *The Origins*, p. 41.

<sup>57</sup> Al-Nahl: 89.

<sup>58</sup> See al-Shāfiʿī, *Jimāʿ al-ʿIlm.* pp. 13-14; Schacht, *The Origins.* p. 41.

<sup>59</sup> The rejection of all *ḥadīths* is also attributed to the extremist Rawāfiḍ and the Muʿtazilah sects, al-Nazzāmiyyah. See al-Suyūṭī, *Miftāḥ al-Jannah*. p. 3; al-Sibāʿī, *al-Sunnah wa Makānatuhā fī al-Tashrīʿ al-Islāmī*. pp. 149, 151.



In other aspects, *ahl al-kalām* demand that in order for *ḥadīth* to be accepted it must be transmitted by many from many (*mā rawāh al-kāffah ʿan al-kāffah*) or widely spread (*khābar al-tawātur*).<sup>60</sup>

And as far as the moderate wing of *ahl al-kalām* is concerned, their views on *khābar al-wāḥid* can be found next in the discussion of the Muʿtazilah's view on *ḥadīth*.

### 3.3.3.2 Al-Shāfiʿī and Individual Members of the Muʿtazilah

If the thesis that the term "*ahl al-kalām*" in al-Shāfiʿī's writings refers to the Muʿtazilah seems correct, it is worth noting individual members of the Muʿtazilah who had a relationship with al-Shāfiʿī. This relationship is seen in terms of discussions and *mujādalah* that took place between them. Watt, in his *Formative Period of Islamic Thought* lists the following individuals who had disputes with al-Shāfiʿī.<sup>61</sup>

#### i. Ḥafṣ al-Fard.

According to Watt, it is difficult to date the dispute between Al-Shāfiʿī and Ḥafṣ al-Fard.<sup>62</sup> The disputes are about *al-kalām*,<sup>63</sup> in particular regarding the creation of the Qurʾān. The severe disagreement between them in this matter caused al-Shāfiʿī to accuse Ḥafṣ al-Fard of being an unbeliever. This might be the possible explanation for al-

<sup>60</sup> Cf. Schacht, *The Origins*. p. 51.

<sup>61</sup> W. Montgomery Watt, *The Formative Period of Islamic Thought*. Edinburgh: University Press, 1973.

<sup>62</sup> *Ibid.*, p. 202.

<sup>63</sup> See Ibn Abī Ḥātim al-Rāzī, *ʿĀdāb al-Shāfiʿī*. pp. 182ff.

Shāfi'ī's dislike in engaging himself in *kalām*. In a famous anecdote, he said it is better for a servant (ʿabd) to meet his God with all sins apart from *shirk* than to get involved in *kalām*. He is also reported to have said that if one makes mistakes in such and such, they would say you are wrong; but in *kalām* if one makes mistakes they would say that you are unbeliever.<sup>64</sup>

ii. Sufyān b. Sakhtān.

He is reported to have helped the Ḥanafīte ʿĪsā b. Abān to write a book against al-Shāfi'ī.<sup>65</sup>

iii. Ibn ʿUlayyah.

He had a dispute with al-Shāfi'ī.<sup>66</sup> Al-Baghdādī reports that the disagreement between them were on the validity of *khavar al-wāḥid*. Details of disagreement can be referred to in Chapter Nine: Introduction to *Kitāb Jimāʿ al-ʿIlm*.

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<sup>64</sup> See Al-Khatīb al-Baghdādī, *Manāqib al-Shāfi'ī*, vol. I. pp. 454-456.

<sup>65</sup> Watt, *The Formative Period of Islamic Thought*, p. 203.

<sup>66</sup> Nyberg, "al-Mu'tazila", *E.I.*[shorter] vol. vi. p. 791; Watt, *The Formative Period*, p. 204; al-Baghdādī, *Manāqib al-Shāfi'ī*, vol.I. p. 457.

iv. Bishr b. al-Ghiyāth al-Marīṣī.

Bishr al-Marīṣī was the one who was very close to the Caliph al-Ma'mūn. He had discussions (*munāẓarāt*) with al-Shāfi'ī<sup>67</sup> both on *kalām* and jurisprudence.<sup>68</sup>

Having mentioned individuals of the Mu'tazilah who were involved in the discussion with al-Shāfi'ī, it is worth noting one of the reasons that drove al-Shāfi'ī to leave Baghdād for Egypt. It was because he was dissatisfied with the environment he lived in where the Caliph al-Ma'mūn who had subscribed himself to the ideas and doctrines of the Mu'tazilah attempted to force others to embrace them.<sup>69</sup>

### 3.3.3.3 The Mu'tazilah's Views on Jurisprudence

The Mu'tazilah were a famous group of theologians/rationalists in early Islam. Their doctrines in theology are more important than in jurisprudence. Therefore, it is very difficult to find in details their point of views on the Qur'ān, *sunnah*, *ijmā'* and *qiyās*. On the other hand, their views are discussed more by others rather than in their own writings.

According to Nyberg, among the characteristic features of the al-Mu'tazilah at the beginning of Abbasid caliphate is that they were in serious disagreement with *ahl al-hadīth*.<sup>70</sup> And among al-Mu'tazilah dogmatics are (i) apologetic (ii) strictly Qur'ānic; the

<sup>67</sup> Al-Baghdādī, *Manāqib al-Shāfi'ī*, vol.1. p. 463-464.

<sup>68</sup> Sha'bān Muḥammad Ismā'īl, *Uṣūl al-Fiqh*, p. 71.

<sup>69</sup> Abū Zahrah, *al-Shāfi'ī*, p. 27.

<sup>70</sup> H. S. Nyberg, "al-Mu'tazila", p. 789.

Qur'ān is the only source of theological denomination (*asma'*) and of the precepts of religion (*ahkām*) (iii) polemical (iv) speculative and (v) intellectual.

According to Qādī 'Abd al-Jabbār<sup>71</sup>, there are three types of evidence (*adillah*); i) reason (*'aql*), ii) the Qur'ān and iii) *sunnah*. This hierarchical order is totally different from that of other Muslims. Normally, the *uṣūlī* scholars accommodate the Qur'ān and *sunnah* in the first place followed by *ijmā'* and *qiyās*. Having said that, 'Abd al-Jabbār has justified why he did so. According to him, by putting reason in the first place, the good and bad things can be differentiated. And moreover, by reason it is known that both the Qur'ān and *sunnah* are *ḥujjah*. So, in the view of 'Abd al-Jabbār as Mu'tazilah thinker view in general, reason (*'aql*) is very important as a tool in dealings with the religious matters.<sup>72</sup> In fact, they have won the battle against the enemies of Islam such as *Zanādiqah* by using reason and logic in their debates and *mujādalāh*.<sup>73</sup>

### 3.3.3.4 The Mu'tazilah's View On *Ḥadīth*

Regarding the Mu'tazilah's views on *ḥadīth*, Muṣṭafā al-Sibā'ī<sup>74</sup> asks the following questions,

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<sup>71</sup> Qādī 'Abd al-Jabbār, *Ṭabaqāt al-Mu'tazilah-Kitāb Faḍl al-'Itizāl wa Ṭabaqāt al-Mu'tazilah wa Mubāyanatihim li Sā'ir al-Mukhālifīn*. Ed. Fu'ād Sayyid. Tunisia: Dār al-Tunisiyyah. 1974.

<sup>72</sup> Abū Zahrah, *al-Shāfi'*. p. 124.

<sup>73</sup> Abū Zahrah, *al-Shāfi'*. pp. 130-1.

<sup>74</sup> Muṣṭafā al-Sibā'ī, *al-Sunnah wa Makānatuhā fī al-Tashrī' al-Islāmī*. pp. 134-5.

- i. what is the Mu'tazilah's view concerning the authority (*ḥujjiyyah*) of both *mutāwatir* and *āḥād hadīths*,
- ii. do they reject both of them, or
- iii. do they accept the authority of *mutawātir* and reject the authority of *khavar al-wāḥid*?

In reply, he quotes i) al-Āmidī that Abū al-Ḥusayn al-Mu'tazilī was among those who declared that *khavar al-wāḥid* should logically be accepted, whereas al-Jubbā'ī and a group of *al-Mutakallimīn* say that *khavar al-wāḥid* does not logically give the authority.

ii) al-Suyūṭī in *al-Tadrīb*, that 'Alī al-Jubbā'ī would not accept a *khavar* if it had transmitted by a single trustworthy transmitter, unless it had been consolidated by other trustworthy transmitter, or supported by the *ẓāhir* of the Qur'ān or the *ẓāhir* of another *khavar*, or it was spread [well known] among Companions or most of them held it.

iii) Ibn Ḥazm that all Muslims accept (*ijmā'*) *khavar al-wāḥid* of a trustworthy (*thiqah*) from the Prophet from the early days of Islam. This phenomenon applied to every group such *ahl al-sunnah*, *al-Khawārij*, *Shī'ah*, *al-Qadariyyah*, until the theologians of the Mu'tazilah made it a heresy after the hundredth year of the Hijrah and opposed this *ijmā'*. In another place, Ibn Ḥazm says that al-Mu'tazilah rejected the authority of *khavar al-wāḥid* and that "all of the Mu'tazilah and Khawārij say that *khavar al-wāḥid* does not engender definite knowledge (*'ilm*)".

iv) Abū Manṣūr al-Baghdādī and al-Rāzī state that the *al-Nazzāmiyyah* (a group of the Mu'tazilah) rejected the authority of *mutawātir* and *khavar al-wāḥid*.

### 3.4 The Conflict Between *Ahl al-Ḥadīth* and *Ahl al-Ra'y*

Prior to al-Shāfi'ī's time, Muslims were generally divided into two groups, the *ahl (aṣḥāb) al-ḥadīth* and the *ahl al-ra'y*.<sup>75</sup> This phenomenon had started from the time of the Companions. In the absence of a *ḥadīth* in any given case, their methods of deriving rulings differed. *Ahl al-ra'y* would exercise their *ra'y* or *ijtihād* but, when a relevant *ḥadīth* for a case was made available to them which seemed to contradict their previous judgement, they would, without hesitation, revert to the meaning of the *ḥadīth*. On the contrary, the *ahl al-ḥadīth* in similar circumstances would not apply their *ra'y* unless desperate.<sup>76</sup>

Disagreements between the *ahl al-ḥadīth* and the *ahl al-ra'y* which became obvious in the time of the *tābi'īn*<sup>77</sup> became more glaring during the periods of the *tābi' al-tābi'īn* and the establishment of the *madhāhib*.<sup>78</sup> Reports of al-Bayhaqī in *Manāqib al-Shāfi'ī* and of Ibn Abī Ḥātim al-Rāzī in *Ādāb al-Shāfi'ī wa Manāqibuh* indicate how the *ahl al-ḥadīth* prior to al-Shāfi'ī's time were unable to entertain a balanced discourse over the supremacy of the *ahl al-ra'y*.

Through his reputation, al-Shāfi'ī had had an important role in bridging the gap. That is why in formulating the principles of *uṣūl al-fiqh* he emphasizes the importance of

<sup>75</sup> Ibn Abī Ḥātim, *Ādāb al-Shāfi'ī*, p. 138.

<sup>76</sup> Abū Zahrah, *al-Shāfi'ī*, p. 68-71.

<sup>77</sup> *Ibid.*, p. 68.

<sup>78</sup> *Ibid.*, pp. 68-9.

the *sunnah* of the Prophet and also *qiyās*. By doing so, the gap between the *ahl al-ḥadīth* and the *ahl al-ra'y* was reduced.<sup>79</sup>

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<sup>79</sup> Cf. al-Būṭī, Muḥammad Saʿīd Ramaḍān, "*Athar al-Shāfiʿī fī Manhaj al-Taṣkīr al-Islāmī Qadīman wa ḥadīthan*", p. 10. Through his *al-Risālah*, al-Shāfiʿī emphasizes the relationship between the role of reason (*ʿaql*) and of revelation (*naql*). See Abū Zahrah, *al-Shāfiʿī*, p. 74.

## CHAPTER FOUR: AL-SHĀFI'Ī'S WRITINGS ON ḤADĪTH

In this chapter, al-Shāfi'ī's writings on ḥadīth will be divided into two categories. The first category is his writings on ḥadīth as classified as an *uṣūl al-fiqh* treatment, in which the importance of ḥadīth or *sunnah* is seen as a source that constitutes Islamic law. The second is his writings on ḥadīth as seen as a collection of ḥadīths.

It is crucial to analyse al-Shāfi'ī's works on ḥadīths in order to understand his thoughts about them through his various writings. The title of "the defender of *sunnah*" which was given to him reflects his writings.

### 4.1 Al-Shāfi'ī's Writings about Ḥadīth as Uṣūl al-Fiqh

Al-Shāfi'ī's writings which fall into this category are *al-Risālah*, *Jimā' al-ʿIlm*, *Ikhtilāf al-Ḥadīth* and *Ikhtilāf Mālik wa al-Shāfi'ī*. These four books will be treated as briefly as possible by summarising related issues on ḥadīth.

#### 4.1.1 *Al-Risālah*

There are two versions of *al-Risālah*; the old (*qadīmah*) and the new (*jadīdah*). The old *Risālah* was composed by al-Shāfi'ī in Makkah<sup>1</sup> on the request of ʿAbd al-Raḥmān b. Maḥdī (135-198H), when the latter asked him to compose a book

<sup>1</sup> Aḥmad Muḥammad Shākir, *His Introduction to al-Risālah*, p. 11 citing al-Fakhr al-Rāzī, *Manāqib al-Shāfi'ī*, p. 57, that he contends that *al-Risālah* was firstly composed in Baghdād. Then, al-Shāfi'ī rewrote it when he was in Egypt.





expounding the meaning of the Qur'ān, the acceptance of *akhbār*, the authority of *ijmā'* and *nāsikh* and *mansūkh* of the Qur'ān and the *sunnah*.<sup>2</sup>

The present and existing version of *al-Risālah* is believed to be al-Shāfi'ī's dictation (*imlā'*) to al-Rabī'. This statement is derived from textual evidence found in *al-Risālah* itself.<sup>3</sup> This work is recognised as the first written manual about *uṣūl al-fiqh* as well as *uṣūl al-ḥadīth*.<sup>4</sup>

In *al-Risālah*, al-Shāfi'ī gives a great deal of attention to *ḥadīth* or *sunnah* of the Prophet because of its paramount importance in Islamic jurisprudence. He mentions on many occasions that the verified *sunnah* is on the same level as the Qur'ān as the primary source of Islam. Moreover, in many places, he explains that the *sunnah* of the Prophet is the explainer (*mubayyin*, *shāriḥ*) of the Qur'ān, for most of the Qur'ānic verses are in general terms and need to be explained. This explains why al-Shāfi'ī argues that the Qur'ān needs the *sunnah* of the Prophet in terms of expounding what is ambiguous in it.

The major topics of *ḥadīth* al-Shāfi'ī discussed are as follows;

- i. the role of the *sunnah* of the Prophet,<sup>5</sup>
- ii. *'ilal* (weaknesses) of *ḥadīths*,<sup>6</sup>

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<sup>2</sup> Al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, vol. II, pp. 64-5; Aḥmad Muḥammad Shākir, *His Introduction to al-Risālah*, p. 11.

<sup>3</sup> Aḥmad Muḥammad Shākir, *His Introduction to al-Risālah*, p. 12.

<sup>4</sup> Shākir, *Introduction*, p. 13.

<sup>5</sup> *Al-Risālah*, paras. 83-91, 92-95, 96-103, 214-235, 466-485, 1610-1621.

<sup>6</sup> *Al-Risālah*, pp. 210-297.

iii. *khavar al-wāḥid*,<sup>7</sup>

iv. *al-ḥujjah fī tathbīt khavar al-wāḥid*,<sup>8</sup> and

v. *mursal ḥadīths*.<sup>9</sup>

### i. The Role of the *Sunnah* of the Prophet

Among the roles of the *sunnah* is *bayān* (explicit expounding). Under the term *bayān*, al-Shāfi'ī highlights certain roles played by the *sunnah*. Prior to expounding the role of the *sunnah*, at the very beginning al-Shāfi'ī cites verses of the Qur'ān which indicate that the Prophet must be followed by Muslims. Obedience to the Prophet means obedience to Allāh. Having established this ground, he continues to elaborate the role of the *sunnah* of the Prophet. There are at least five roles/positions of the *sunnah* in relation to the Qur'ān.

- i. It clarifies the *mujmal* of the Qur'ān. For instance, the *sunnah* of the Prophet clarifies the *mujmal* obligations in the Qur'ān such as *ṣalāt* and others and explains it in detail, such as the number of *raka'āt*, its time etc.
- ii. It clarifies the general things which are intended to be general, or the general things which are intended to be particular (*khāṣṣ*).
- iii. It supports and corroborates the obligations which already exist in the Qur'ān.
- iv. It comes with new rulings which are not mentioned in the Qur'ān.
- v. It indicates the abrogated and abrogating rulings.

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<sup>7</sup> *Al-Risālah*. pp. 369-400.

<sup>8</sup> *Al-Risālah*. pp. 401-470.

<sup>9</sup> *Al-Risālah*. pp. 461-471.

## ii. The *‘Ilal* (Weaknesses) of *Ḥadīths*

In this discussion, al-Shāfi‘ī mentions many types of the apparent differences among *ḥadīths*. The method of approaching this matter is also mentioned in his *Ikhtilāf al-Ḥadīth*. For details, refer to Chapter Eight on the Science of *Ikhtilāf al-Ḥadīth*.

## iii & iv. *Khabar al-Wāḥid* and Its Arguments

The personal characteristics of the transmitters of *ḥadīths* are very important in the science of *ḥadīth*, for the acceptability of their *ḥadīths* depends whether or not they are reliable and trustworthy persons. Al-Shāfi‘ī outlines in *al-Risālah* the personal qualities of the transmitters. The *‘adālah* of transmitters is given priority.

As far as *khabar al-wāḥid* is concerned, al-Shāfi‘ī discusses it in a great detail. Arguments in favour of it are documented. These justifications as to why *khabar al-wāḥid* must be accepted in Islam derive from the Qur’ān, the *sunnah* of the Prophet, *qiyās* and the *sīrah* of the Companions and Successors.

## v. *Mursal Ḥadīths*

As far as *mursal ḥadīths* are concerned, al-Shāfi‘ī lays down certain conditions before they are accepted as a source of law. Details of this discussion can be found in Chapter Seven: Al-Shāfi‘ī and *Mursal Ḥadīths*.

### 4.1.2 *Kitāb Jimā‘ al-‘Ilm*

The significance of this work is linked to the existence of certain groups in the second century of the Hijrah who rejected the entire body of *ḥadīths* or repudiated a part of them, i.e. *khavar al-wāḥid*.

It lays out al-Shāfi'ī's discussions with his opponents in detail. Evidence and arguments in favour of *ḥadīths* are advanced by al-Shāfi'ī, both against those who rejected all *ḥadīths* or those who rejected only *khavar al-wāḥid*.

For a detailed introduction to this work, refer to Chapter Nine: Introduction to *Kitāb Jimā' al-ʿIlm*.

#### 4.1.3 *Ikhtilāf al-Ḥadīth*

As far as *kitāb Ikhtilāf al-Ḥadīth* is concerned, Muḥammad al-Khudārī suggests that this *Ikhtilāf al-Ḥadīth* of al-Shāfi'ī is the most important work for defending the *sunnah* of the Prophet in general and *khavar al-wāḥid* in particular.<sup>10</sup>

*Ikhtilāf al-Ḥadīth* can be divided into two parts. The first part is an introductory section discussing various issues related to *ḥadīth*. It begins with expounding the position held by the Prophet as derived from the Qur'ān. That is, Muslims are obliged to obey whatever the Prophet enjoins or withholds and accept his *ḥadīths*. The obedience to the Prophet after his death is by accepting *ḥadīths* from him.

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<sup>10</sup> Muḥammad al-Khudārī, *Tārīkh al-Tashrīʿ al-Islāmī*, p. 318.

To justify the acceptance of *ḥadīths* in general and *khbar al-wāḥid* in particular, he produces various proofs to show that as long as the transmitters of *ḥadīths* are reliable, the acceptance of *ḥadīths* is compulsory for Muslims.

For instance, he mentions that many cases in early Islam where Companions did something or refrained from it are based on *khbar al-wāḥid*. These cases include the changing of the *qiblah*, the banning of wine, kissing during Ramaḍān, the confession of adultery before Unays al-Aslamī and ʿUmar's changing of his opinions [such as *diyat al-aṣābiʿ*, *diyat al-ʿāqilah*, *diyat al-janīn*, *jizyat al-Majūs* and *ṭāʿūn*].<sup>11</sup>

He also talks about *bayān*. General and particular in the Qur'ān are treated briefly in this *Ikhtilāf al-Ḥadīth*, not as he did in *al-Risālah*. The abrogating and abrogated verses in the Qur'ān are given. The principle is that the Qur'ān can only be abrogated by the Qur'ān. The *sunnah* of the Prophet is subordinate to the Qur'ān.<sup>12</sup>

At the end of the introductory section,<sup>13</sup> al-Shāfiʿī gives general principles with regard to apparent contradictory *ḥadīths*. *Ḥadīths* of the Prophet are classified as Arabic speech in which sometimes general terms are intended to be general and other times particular, in addition to other things. If it is possible to use two *ḥadīths* together, they should be used together. One of them would not suspend another *ḥadīth*. There are abrogating and abrogated *ḥadīths* such as the *ḥadīth* on the changing of the *qiblah* from Bayt al-Maqdis to Masjid al-Ḥarām. The basis to

<sup>11</sup> Al-Shāfiʿī, *Ikhtilāf al-Ḥadīth*. ed. ʿĀmir Aḥmad Ḥaydar. 1985, Beirut: Muʾassasat al-Kutub al-Thaqāfiyyah, pp. 43-45.

<sup>12</sup> *Ikhtilāf al-Ḥadīth*. p. 56.

<sup>13</sup> *Ikhtilāf al-Ḥadīth*. p. 64.

determine which one is *nāsikh* (abrogating) and which one is *mansūkh* (abrogated) is based on *ḥadīths* (reports) from the Prophet, a saying or time (date) which indicates that one of them comes after another. In this case, the later *ḥadīth* is considered as *nāsikh*.

In the second part, al-Shāfi'ī brings together many *ḥadīths* which apparently contradict each other. Al-Shāfi'ī is believed to have solved many ambiguous cases where *ḥadīths* are seemingly contradictory. Below is a list of cases which al-Shāfi'ī treats in this part.

There are for example apparent contradictions within the category of the *mubāḥ* ("what is permitted"): recitation in the prayer, recitation of *tashahhud*, *ṣalāt al-witr*, fasting on 'Āshūrā', times at which prayers are *makrūh*, the eating of a *dabb*, *jizyah*, women going out to the Mosque, taking a bath on Friday, the marriage of a virgin woman, a man's gift to his child, the selling of *mukātab*, sacrificed animals (*ḍaḥāyā*), washing feet or wiping, raising hands in prayers, doing prayer alone, *ṣalāt al-khawf*, the prayer of solar or lunar eclipse, the meat of sacrifice, *mut'ah* marriage, *shufah*, weeping for a deceased, talking during prayer, recitation of *qunūt* in prayers, a man who proposes marriage on the top of another's proposal, fasting and *iftār* based on sighting of the *hilāl*, the divorce of a menstruating woman, exchanging fresh dates for dried ones, *da'wā wa bayyināt* and others.

#### 4.1.4 IKHTILĀF MĀLIK WA AL-SHĀFI'Ī<sup>14</sup>

There are two main points with regard to al-Shāfi'ī's contention against Mālik in *Ikhtilāf Mālik wa al-Shāfi'ī*.<sup>15</sup> First, al-Shāfi'ī rejects the validity of Madīnan claims to have *ijmā'* on several matters. Al-Shāfi'ī attempts to remove that claim as an authoritative basis of argumentation.<sup>16</sup> Secondly, al-Shāfi'ī champions the authority of *khavar al-wāḥid* and argues that *ijmā'* based on deduction from other sources of law and on other types of *ijtihād* is not sufficiently strong to reject *khavar al-wāḥid* which opposes it.

#### Background of the Work

There are some possible reasons for the appearance of *Ikhtilāf Mālik wa al-Shāfi'ī*. The first is Fityān's disagreement with al-Shāfi'ī in Egypt as shown in Chapter One.<sup>17</sup> Second, there were followers of Mālik in Andalus with whom al-Shāfi'ī disagreed over their method of argument. According to al-Shāfi'ī, the majority of people in their argument argue on the authority of the Prophet by saying "the Apostle of Allāh [may Allāh bless him and grant him peace] says so and so". While, the followers of Mālik in Andalus argued on the authority of Mālik by saying, "Mālik said so and so". Furthermore, al-Shāfi'ī argues that Mālik is a human being who

<sup>14</sup> Al-Shāfi'ī, *Ikhtilāf Mālik wa al-Shāfi'ī*. In the margin of *al-Umm*. vol. VII, Beirut: Dār al-Ma'rifah, pp. 191-269.

<sup>15</sup> Abū Zahrah, *Mālik - Ḥayātuh wa 'Aṣruh Ārā'uh wa Fiqhuh*. 1948, Cairo: Dār al-Fikr, p. 339.

<sup>16</sup> 'Umar Fārūq 'Abd Allāh, "Mālik's Concept of 'Amal in the Light of Mālikī Legal Theory", 2 vols. Unpublished PhD thesis, University of Chicago, September 1978, citing Abū Zahrah, *Mālik*. p. 339.

<sup>17</sup> Al-Bayhaqī, *Manāqib al-Shāfi'ī*. vol. I. p. 508; 'Abd al-Ḥalīm al-Jundī, *al-Imām al-Shāfi'ī*. p. 289.

sometimes makes mistakes and errors. This most probably led him to write a book against Mālik. Third, according to al-Shāfi'ī, when he came to Egypt, he only knew that Mālik contradicted sixteen *ḥadīths*. However, when he studied the matter again, he found that Mālik argued by holding the *aṣl* but put aside the *far'* and the other way round.<sup>18</sup> This is supported by al-Rabī' as a genuine reason for the composition of the work.<sup>19</sup> And this is clear from the beginning of the introduction of this work.<sup>20</sup>

In the beginning of this work, al-Shāfi'ī provides a minimum requirement for a *ḥadīth* of the Prophet to carry weight in Islam. The minimum is that a reliable and trustworthy person relates from a reliable and trustworthy person (*thiqah*) until it reaches the Prophet.<sup>21</sup>

It also lays down the principles of *ḥadīth*. According to him, once a *ḥadīth* is definitely confirmed as coming from the Prophet, it cannot be abandoned except in the case where there is another *ḥadīth* contradicts it. Again, the method of solving the seeming differences of *ḥadīth* is given.<sup>22</sup>

#### 4.2 Al-Shāfi'ī's Collections of *Ḥadīths*

There are only two works in this category. They are *al-Musnad* (*Tartīb al-Musnad*) and *al-Sunan al-Ma'thūrah*.

<sup>18</sup> Cf. Abū Zahrah, *al-Shāfi'ī*, pp. 29-31

<sup>19</sup> Al-Bayhaqī, *Manāqib al-Shāfi'ī*, p. 509.

<sup>20</sup> Al-Shāfi'ī, *Kitāb Ikhtilāf Mālik wa al-Shāfi'ī*, p. 191.

<sup>21</sup> Al-Shāfi'ī, *Ikhtilāf Mālik wa al-Shāfi'ī*, p. 191.

<sup>22</sup> *Ibid.*



#### 4.2.1 *Musnad al-Shāfiʿī*<sup>23</sup>

This *Musnad* is ascribed to al-Shāfiʿī. However, there is a dispute whether or not he himself compiled it or it is the work of his followers. Those who incline to believe that this *musnad* is of al-Shāfiʿī's compilation argue that the content of *ḥadīths* is taken from *al-Umm*.<sup>24</sup>

On the other hand, others argue that this *musnad* is not al-Shāfiʿī's compilation, but it was compiled by Abū al-ʿAbbās al-Aṣamm as he heard it from some of al-Shāfiʿī's disciples.<sup>25</sup>

*Ḥadīths* mentioned in the *Musnad* are not the only ones related by al-Shāfiʿī nor those he used as argument in making judgement. They are also not *ḥadīths* which are contained in his earlier works. Rather, it is just a part of many *ḥadīths* which have been chosen by al-Aṣamm. The selected ones are in fact some of the most important *ḥadīths*.

#### 4.2.2. *Al-Sunan al-Ma'thūrah*

<sup>23</sup> Al-Shāfiʿī, *Kitāb al-Musnad*. In the margin of *al-Umm*, Beirut: Dār al-Maʿrifah, pp. 332-342; *Tartīb Musnad al-Imām al-Muʿazzam al-Mujtahid al-Muqaddam Abī ʿAbd Allāh Muḥammad b. Idrīs al-Shāfiʿī*. (Intro. Muḥammad Zāhid al-Ḥasan al-Khawtharī. Ed. Yūsuf ʿAli al-Zawāwī & others) 2 vols. Cairo: Maṭbaʿat al-Saʿādah, 1951.

<sup>24</sup> Muḥammad al-Khudarī, *Tārīkh al-Tashrīʿ al-Islāmī*. p. 319.

<sup>25</sup> Aḥmad Nahrāwī, *Al-Imām al-Shāfiʿī*. p. 711 citing Aḥmad ʿAbd al-Raḥmān al-Bannā, *Sharḥ Badāʾiʿ al-Minan fī Jamʿ wa Tartīb Musnad al-Shāfiʿī wa al-Sunan*. pp. 3-7; Muṣṭafā ʿAbd al-Rāziq, *Tamhīd li Tārīkh al-Falsafah al-Islamiyyah*. pp 229; Muṣṭafā al-Sibāʿī, *al-Sunnah wa Makānatuhā fī al-Tashrīʿ al-Islāmī*. p. 441.

This work of *ḥadīth* bears slightly different titles. According to manuscripts available as shown by °Abd al-Mu°tī Amīn Qal°ajī,<sup>26</sup> there are at least four different titles. They are,

- i. *Kitāb Sunan al-Shāfi°ī*,<sup>27</sup>
- ii. *Kitāb al-Sunan al-Ma'thūrah*,<sup>28</sup>
- iii. *Kitāb al-Sunan*<sup>29</sup> and
- iv. *al-Sunan al-Ma'thūrah*.<sup>30</sup>

This *al-Sunan al-Ma'thūrah* was related by Abū Ja°far al-Ṭahāwī al-Ḥanafī<sup>31</sup> on the authority of Ismā°īl b. Yaḥyā al-Muzanī.

It consists of seven parts in one volume. The *ḥadīths* are arranged in accordance to the subject of *fiqh*. Chapters on *fiqh* in this work can be classified as follows: *ṣalāt*, *qunūt*, *al-fātiḥah*, *ṣiyām*, *zakāh*, *uḍḥiyyah*, *°īdayn*, *jihād*, *bay°ah*, *buyū°*, *nikāḥ*, *sa°ar* and others.

This *al-Sunan* has approximately six hundreds *ḥadīths*.

<sup>26</sup> Qal°ajī, *His Introduction to al-Sunan al-Ma'thūrah of al-Shāfi°ī*. 1987, Beirut: Dār al-Ma°rifah.

<sup>27</sup> This manuscript is preserved in Dār al-Kutub al-Miṣriyyah (276) *ḥadīth*.

<sup>28</sup> This manuscript is preserved in Maktabat al-Khazānah al-°ammah in al-Ribāt.

<sup>29</sup> This manuscript is preserved in Dār al-Kutub al-Miṣriyyah (724) *ḥadīth*.

<sup>30</sup> This manuscript is preserved in Dār al-Kutub al-Miṣriyyah (1534).

<sup>31</sup> Al-Ṭahāwī is the author of *Ikhtilāf al-Fuqahā°*, *al-Shurūṭ*, *Ma°ānī al-°āthār*, *Aḥkām al-Qur°ān*, *al-Aqīdah* etc.

## CHAPTER FIVE: THE CONCEPT OF THE *SUNNAH* OF THE PROPHET

### 5.1 Al-Shāfi'ī's Concept of Prophetic *Sunnah* (*Sunnat al-Nabī*)

#### 5.1.2 General Discussion

There are many discussions in modern literature<sup>1</sup> regarding the concept of the *sunnah* of the Prophet or the term *sunnah* itself. Analysis of the term *sunnah* based on early literature leads to different findings.

Western scholars such as Schacht and Margoliouth held that there was no such original concept of a *sunnah* of the Prophet. To them, the concept was a later development.<sup>2</sup> Schacht disagrees with al-Shāfi'ī who defined *sunnah* as the model behaviour of the Prophet and the latter's direct connotation of '*sunnah*' as the '*sunnah*'

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<sup>1</sup> Ignaz Goldziher, *Muslim Studies (Muhammedanische Studien)*. Ed. S. M. Stern and transl. C. R. Barber & S. M. Stern, vol. II, 1971. London: George Allen & Unwin Ltd. Chapter one: *Ḥadīth and Sunna*, pp. 17-37; Joseph Schacht, *Origins*, pp. 58ff; N. J. Coulson, *A History of Islamic Law*, pp. 39, 56-7.; M. M. Bravmann, *The Spiritual Background of Early Islam- Studies in Ancient Arab Concepts*. 1972. Leiden: E. J. Brill, see chapter III- *Sunnah and Related Concepts*, pp. 123-198.; G. H. A. Juynboll, *Muslim Tradition- Studies in Chronology, Provenance, and Authorship of Early Ḥadīth*. 1983. Cambridge: Cambridge University Press, pp. 30-39.; "Some New Ideas on the Development of *Sunna* as a Technical Term in Early Islam", *Jerusalem Studies in Arabic and Islam (JSAI)*, 10 (1987), pp. 97-118; Zafar Ishaq Ansari, "Islamic Juristic Terminology Before Shāfi'ī: A Semantic Analysis with Special Reference to Kūfa", *ARABICA*. XIX (1972), pp. 255-300; *The Early Development of Islamic Fiqh in Kūfa*, Ph.D Thesis 1966, McGill University, Montreal, pp. 209ff.; Ahmad Hasan, "The *Sunnah* Its Early Concept and Development", *Islamic Studies*. vol. VII, 1968, pp. 47-69; Fazlur Rahman, "*Sunnah and Ḥadīth*", *Islamic Studies*. vol. I, 1962, pp. 1-36, "Concepts *Sunnah*, *Ijtihad* and *Ijmā'* in the Early Period", *IS*, vol. I March 1962, pp. 5-21; Muhammad Yusuf Guraya, "The Concept of *Sunnah*: A Historical Study", in *IS*, vol II (1972), pp. 13-44; M. Muṣṭafā al-A'zamī, *On Schacht's Origins of Muhammadan Jurisprudence*. 1985, Saudi Arabia: King Saud University; Imtiaz Ahmad, *The Significance of Sunna and Ḥadīth and Their Early Documentation*, Ph.D Thesis 1974, University of Edinburgh; John Burton, *An Introduction to the Ḥadīth*.

<sup>2</sup> J. Schacht, *Origins*, pp. 4-5, 20, 30, 40, 58, 61-3, 76, 80; D. S. Margoliouth, *The Early Development of Mohammadanism: Lectures Delivered in the University of London*. 1914, New York: C. Scribner's Sons, pp. 65-98; G. H. A. Juynboll, "Some New Ideas on the Development of *Sunna* as a Technical Term in Early Islam", *JSAI*. 10, 1987, p. 99.

of the Prophet'. According to Schacht,<sup>3</sup> *sunnah* is nothing more than precedent, way of life. Goldziher<sup>4</sup> has shown that this originally pagan term was taken over and adapted by Islam, and Margoliouth has concluded that *sunnah* meant originally the ideal or normative usage of the community, and only later acquired the restricted meaning of precedents set by the Prophet.<sup>5</sup>

Schacht argues that the concept of the *sunnah* of the Prophet emerged first in Kūfah in connection with the back-projection of doctrine applied as a means of securing greater authority for local practices. He believes that the Madīnans used this concept only rarely.<sup>6</sup>

Muslim authors believe that the *sunnah* of the Prophet already existed in early Islam. On the other hand, western scholars argue that the concept of Prophetic *sunnah* is absent in the Qur'ān. Only 'the *sunnah* of God (*sunnat Allāh*)' and 'the *sunnah* of the predecessors (*sunnat al-awwalīn*)' are mentioned in the Qur'ān. To this, Ansari and Ahmad Hasan argue that though the *sunnah* of the Prophet *per se* is not mentioned, the essence of the concept is clearly stated in the Qur'ān for it testifies to the conduct of the Prophet as conduct par excellence;<sup>7</sup>

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<sup>3</sup> Schacht, *The Origins*. p. 58.

<sup>4</sup> Goldziher, *Muslim Studies*. vol. II, p. 25.

<sup>5</sup> Ahmad Hasan, *Early Development*. pp. 69ff., 75.

<sup>6</sup> Schacht, *The Origins*. pp. 73-77, see also Ahmad Hasan, "The *Sunnah*-Its Early Concept and Development". p. 50

<sup>7</sup> Ansari, *Islamic Juristic Terminology Before Shāfi'ī: A Semantic Analysis with Special Reference to Kūfa*. p. 262; Ahmad Hasan, "The *Sunnah*-Its Early Concept and Development". pp. 49-50.

"Certainly you have in the Messenger of Allāh a good example (*qudwah ḥasanah*)".<sup>8</sup>

One of the earliest uses of this expression is attributed to ʿUmar who was reported to have explained the functions of his officials as consisting the instruction of the people in their religion and in the *sunnah* of their Prophet.<sup>9</sup> An epistle written by al-Ḥasan al-Baṣrī (d. 110H)<sup>10</sup> to the Umayyad Caliph ʿAbd al-Malik b. Marwān (65-86H) also contains the expression *sunnah* of the Prophet.<sup>11</sup>

### 5.1.3 The Authority of the Prophet's *Sunnah*

It is characteristic of al-Shāfiʿī to begin his writings by explaining what it means to follow the Prophet (*ittibāʿ al-Rasūl*).<sup>12</sup> He does so in order to establish a concrete foundation for discussion. His methodical approach, however, differs according to his different audience or opponent. For instance, when he discussed this matter with the *ahl al-kalām* (rationalists) or the so-called *ahl al-Qurʾān*, he would provide evidence from the Qurʾān, since the *ahl al-Qurʾān* would not accept anything but the Qurʾān and it would be irrelevant to adduce a piece of evidence from the

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<sup>8</sup> Al-Aḥzāb: 21.

<sup>9</sup> Abū Yūsuf, *Kitāb al-Kharāj*, pp. 14 and 115 as cited by Ansari, "Islamic Juristic Terminology", p. 263, and Ahmad Hasan, "The *Sunnah*-Its Early Concept and Development", p. 50.

<sup>10</sup> His full name is al-Ḥasan b. Abī al-Ḥasan Yasār al-Baṣrī, Abū Saʿīd. One of Successors. See al-Suyūṭī, *Ṭabaqāt al-Ḥuffāz*, p. 28.

<sup>11</sup> See Ibn al-Murtaḍā, Ahmad b. Yahyā, *Kitāb Ṭabaqāt al-Muʿtazilah*. Beirut, p.19; *al-Ḥasan al-Baṣrī's Treatise*. Ed. H. Ritter in *Der Islam*, vol. XXI, 1933, p. 68.

<sup>12</sup> This is evident in his writings like *al-Risālah*, *Ikhtilāf al-Ḥadīth*, *Jimāʿ al-ʿIlm*, *Ikhtilāf Mālik wa al-Shāfiʿī* and others.

*ḥadīth*, for the fundamental arguments between the two are different. Therefore, in order to proceed with the discussion and to convince his audience, al-Shāfi'ī pursues the basis of his arguments according to situational needs. This kind of argumentation appears in *Jimā' al-ʿIlm*,<sup>13</sup> in which his opponents are the *ahl al-kalām*. Al-Shāfi'ī cites three Qur'ānic verses to prove to his opponents that the obligation to follow the Prophet is derived from the Qur'ān itself. These are,

- i. "But no, by thy Lord, they can have no [real] faith until they make thee judge in all disputes between them, and find in their souls no resistance against your decisions, but accept them with the fullest conviction".<sup>14</sup>
- ii. "He who obeys the Apostle, obeys Allāh".<sup>15</sup>
- iii. "Then, let those beware who withstand the Apostle's order, lest some trial befall them, or a grievous penalty be inflicted on them".<sup>16</sup>

From the above verses, it is established that the commandment to follow the injunctions given by the Prophet is derived from the Qur'ān itself. Yet, how does one obey and follow the Prophet after his death? On this point, al-Shāfi'ī argues that the sole way is to accept the *ḥadīth* from the Prophet. Therefore, the acceptance of the *sunnah* or the *ḥadīth* from the Prophet is incumbent upon each and every Muslim.<sup>17</sup>

Throughout his life, al-Shāfi'ī worked to reinforce the authority and superiority of the *sunnah* of the Prophet. During that period, rationalist (theological) movements

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<sup>13</sup> Al-Shāfi'ī, *Jimā' al-ʿIlm*. pp. 13-27.

<sup>14</sup> *Al-Aḥzāb*: 24.

<sup>15</sup> *Al-Nisā'*: 80.

<sup>16</sup> *Al-Nūr*: 63.

<sup>17</sup> *Jimā' al-ʿIlm*. p. 23.

especially the Mu'tazilah were at their peak. The most obvious doctrine held by the Mu'tazilah is the supremacy of reason.<sup>18</sup> In this respect, al-Shāfi'ī worked to formulate a hierarchical order of proofs in which revelation, i.e. the Qur'ān and ḥadīth are given priority over consensus opinion and reasoning. In his writings, al-Shāfi'ī gave priority to the ḥadīth or the *sunnah* of the Prophet and his most significant contribution to ḥadīth is the acceptance of ḥadīth as whole, and particularly isolated traditions (*khābar al-wāḥid*), for most of the ḥadīths are in the form of *khābar al-wāḥid*.

Through his books on *uṣūl* like *al-Risālah*, *Jimā' al-ʿIlm*, *Ikhtilāf al-Ḥadīth* and *Ikhtilāf Mālik wa al-Shāfi'ī*, there are at least two principles concerning the authority of the *sunnah* of the Prophet which can be deduced.

- i. No consideration is given to an opinion which contradicts the *sunnah* of the Prophet.<sup>19</sup>
- ii. No one is considered a proof (*ḥujjah*) beside the Prophet.<sup>20</sup>

Having mentioned these, I shall examine in some details their application by al-Shāfi'ī in his writings.

His insistence on the authoritativeness of the *sunnah* of the Prophet leads al-Shāfi'ī to formulate a principle in order to arrive at a systematic argumentation and consistent results. As an illustration, in any given circumstances, there may be ḥadīths or *sunnahs* of the Prophet and *āthār* from the Companions or Successors which apparently contradict each other. While one jurist may hold the *sunnah* of the Prophet,

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<sup>18</sup> Abū Zahrah, *al-Shāfi'ī*. p. 124.

<sup>19</sup> *Al-Risālah*. para. 18112; *Ikhtilāf al-Ḥadīth*. p. 59.

<sup>20</sup> "lays fī aḥad ḥujjah ma' al-Nabī", *al-Risālah*. paras. 1601-3; *Ikhtilāf Mālik*. pp. 192, 262.



another may prefer the *āthār*. The resulting opinion may differ, for each person has his own preference with regard to the evidence available. Al-Shāfi'ī attempts to reconcile such inconsistency or disagreement.

According to al-Shāfi'ī, when a *ḥadīth* is related by trustworthy authority (*ʿadl* and *thiqah*) and certified as coming from the Prophet, it must be accepted and cannot be rejected unless there is another *ḥadīth* that contradicts it.<sup>21</sup> *Ḥadīths* from the Prophet are *sui generis* (self validating) and do not need *āthār* to make them more sound or to strengthen them.<sup>22</sup> If *āthār* of the Companions and Successors are present in a case where a *sunnah* of the Prophet already existed, whether they support or oppose it, the *sunnah* of the Prophet must prevail.

#### 5.1.4 When *Āthār* Contradict the *Sunnah* of the Prophet

As stated earlier, al-Shāfi'ī emphasizes that the *sunnah* of the Prophet is self-validating (*aṣl fī dhātih*) and the presence of *āthār* whether of the Companions or the Successors will not add further strengthen to it.<sup>23</sup> Questions arise as to what happens if *āthār* seem to contradict the *sunnah* of the Prophet. In such a case, according to al-Shāfi'ī, the existence of *āthār* has no weight or significance. To a certain extent, this principle is in disagreement with Mālik's method in terms of the acceptability of

<sup>21</sup> Al-Shāfi'ī, *Ikhtilāf Mālik wa al-Shāfi'ī*, pp. 191, 197.

<sup>22</sup> *Ikhtilāf Mālik wa al-Shāfi'ī*, p. 262.

<sup>23</sup> *Ikhtilāf Mālik*, p. 192.



established practice (*al-amr ʿindānā*, *al-amr al-mujtamaʿ ʿalayh ʿindānā* etc)<sup>24</sup> and his preference for the *āthār* of Companions or Successors. As far as this is concerned, al-Shāfiʿī devotes the whole of *Ikhtilāf Mālik wa al-Shāfiʿī*<sup>25</sup> to disputing with al-Rabīʿ as a representative of Mālik's *madhhab*, criticizing the latter for relating *ḥadīths* in some *ḥadīths* and abandoning or neglecting them in others.

Selective cases will be given here to demonstrate how al-Shāfiʿī sticks to his principles.

#### 5.1.4.1 Touching the Penis

Does touching the penis invalidate *wuḍūʿ*? Al-Shāfiʿī and the Mālikites hold that someone who touches his penis has to do *wuḍūʿ*. Their evidence is the *ḥadīth* of Busrah bint Ṣafwān, that she heard the Prophet saying,

"When one of you touches his penis, he should do *wuḍūʿ*".<sup>26</sup>

Some others like the Ḥanafites<sup>27</sup> hold a contrary view based on an unknown (*majhul*) *ḥadīth*, as claimed by al-Shāfiʿī and *āthār* of Companions,<sup>28</sup> that such

<sup>24</sup> For various terms used in *al-Muwattaʿa*, see Umar Fārūq ʿAbd Allah, *Mālik's Concept of ʿAmal in the Light of Mālikī Legal Theory*. Ph.D Thesis University of Chicago, 1978.

<sup>25</sup> Al-Shāfiʿī, *Kitāb Ikhtilāf Mālik wa al-Shāfiʿī*, pp. 191-329.

<sup>26</sup> *Ikhtilāf Mālik* p. 192. This *ḥadīth* is reported by Mālik - ʿAbd Allāh b. Abī Bakr - ʿUrwah - Marwān - Busrah bint Ṣafwān. For details of the *ḥadīth* of *mass al-dhakar* see Abū Dāwūd, (*ṭahārah*), no. 69; Nasāʾī, (*ṭahārah*) no. 117, (*ghusl*) 30; Muwattaʿa, (*ṭahārah*) 58; Bukhārī, (*ʿilm*) 53, (*ṣalāh*) 9, (*ḥajj*) 21; Tirmidhī, (*ṭahārah*) 61.

<sup>27</sup> Al-Shaybānī, *Kitāb al-Āthār*. Ed. Abū al-Wafāʾ al-Afghānī. 3rd. ed. 1992. vol. I. Beirut: Dār al-Kutub al-ʿIlmiyyah, pp. 35-38, *ḥadīth* no. 22, 23 and 24.

<sup>28</sup> Hudhaylah, ʿAli b. Abī Ṭālib, Ibn Masʿūd, Ibn ʿAbbās, ʿImrān b. al-Ḥuṣayn, ʿAmmār b. Yāsir, Saʿd b. Abī Waqqās.

incident does not invalidate *wuḍū'*. So, in this case, al-Shāfi'ī adheres to the *ḥadīth* of Busrah instead of other *āthār* for he holds that once a *ḥadīth* is confirmed as definitely coming from the Prophet, no other saying will affect it.<sup>29</sup>

#### 5.1.4.2 *Raf' al-Yadayn* in Prayer

As far as raising the hands (*raf' al-yadayn*) in prayer is concerned, al-Shāfi'ī holds a view based on the *ḥadīth*<sup>30</sup> that a worshipper should raise his hands up to his shoulders three times in the first *rak'ah*, and two times in other *raka'ahs*. In the first *rak'ah*, one should raise the hands when one starts the prayer (*takbīrat al-iḥrām*), when one bends to do *rukū'* and when he rises from *rukū'*. For other *raka'ahs*, it should be only two raisings of the hands i.e. when bending to do *rukū'* and when rising from *rukū'*. So, according to al-Shāfi'ī, only during these parts in the prayer we are recommended to raise hands, whereas during others such as performing *sujūd* or starting second *rak'ah*, we are not.

Al-Rabī' expresses a contrary view that raising the hands is recommended only at the beginning of the prayer, not at any other part. Here, as in many places in *Ikhtilāf Mālik wa al-Shāfi'ī*, al-Shāfi'ī criticizes his opponent for neglecting or abandoning *ḥadīths* related by Mālik from the Prophet and from Ibn 'Umar.

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<sup>29</sup> *Ikhtilāf Mālik*. p. 192.

<sup>30</sup> Reported by Mālik - Ibn Shihāb - Sālim - 'Abd Allāh. And the second *ḥadīth* was related by Sufyān - Ibn Shihāb al-Zuhrī - Sālim - 'Abd Allāh b. 'Umar - 'Umar. Al-Shāfi'ī claims that the second *ḥadīth* is related by many people (*biḍ'at 'ashar*), while the third *ḥadīth* was reported by Mālik - Nāfi' - Ibn 'Umar that he (Ibn 'Umar) began his prayer by raising two hands up to the shoulders and rose the hands when he woke up from *rukū'*.

It is related that there was once a *munāẓarah*<sup>31</sup> between Abū Ḥanīfah and al-Awzā'ī concerning this matter. Al-Awzā'ī<sup>32</sup> questioned the former as to why he did not raise his hands during the prayer, when he bent down for *rukū'* and when he rose from *rukū'* since 'Abd Allāh reported that the Prophet did so. However, Abū Ḥanīfah contended that in his view there was no such valid and sound *ḥadīth* related from the Prophet in this matter. Both party in the *munāẓarah* cited their respective authorities. Abū Ḥanīfah claimed that his authorities, - Ḥammād - 'Alqamah - al-Aswad - Ibn Mas'ūd who transmitted the *ḥadīth* to the effect that the Prophet did not raise the hands except at the beginning of prayer, were better than al-Awzā'ī's.<sup>33</sup>

#### 5.1.4.3 *Al-Mash' alā al-Khuffayn* (Wiping the Boots)<sup>34</sup>

Al-Shāfi'ī, based on *ḥadīths* of the Prophet and *āthār* of Companions, holds the view that both *muqīm* (non-traveller) and *musāfir* (traveller) are allowed to wipe

<sup>31</sup> There was a controversy on *raf' al-yadayn fī al-ṣalāt* between *ahl al-ḥadīth* and *ahl al-ra'y* in Andalusia in the time of Baqī b. Makhlad (d. 276/889). According to *ahl al-ḥadīth* and the Mālikites in Andalusia, the *ḥadīth* of Ibn 'Umar (that the Prophet raised his hands in each *takbīr* of the *rukū'*) is considered to abrogate (*nāsikh*) the *ḥadīth* with Kūfan *isnāds* in which the Prophet did not raise his hands in the prayer except once.

See Isabel Fierro, "The Introduction of *Ḥadīth* in al-Andalus (2nd/8th-3rd/9th centuries)", *Der Islam*, 66 (1989), p. 83-5

<sup>32</sup> He is 'Abd al-Raḥmān b. 'Amr Abū 'Umar (88-157H), *imām* of the people of al-Shām. Among his works are *kitāb al-Sunan fī al-Fiqh* and *kitāb al-Masā'il fī al-Fiqh*. See Ibn al-Nadīm, *al-Fihrist*. p. 318; al-Suyūṭī, *Ṭabaqat al-Ḥuffāz*. p. 89.

<sup>33</sup> Abu Ḥanīfah, *Mushnad al-Imām Abī Ḥanīfah*. Ed. Ṣafwat al-Saqqā. 1962. Egypt: Maṭba'at Rabī'ī, pp. 53-4, *ḥadīth* no. 96; al-Ḥajawī, Muḥammad b. al-Ḥasan, *al-Fikr al-Sāmī fī Tārīkh al-Fiqh al-Islāmī*. vol. I, p. 320-1.

<sup>34</sup> *Ikhtilāf Mālik*. pp. 226, 264.

their boots (*khuffayn*), whereas al-Rabī<sup>c</sup> holds the opinion that this facility is restricted only to a *musāfir*.<sup>35</sup>

Al-Shāfi<sup>c</sup> argues on the authority of al-Mughīrah b. Shu<sup>c</sup>bah that in the battle of Tabūk, the Prophet went to the toilet, did *wuḍu'* and wiped his boots, and then did his prayer.<sup>36</sup> It is also reported that Anas b. Mālik went to Qubā', urinated, did *wuḍu'* and wiped his boots and then did his prayer.

#### 5.1.4.4 Doing *Hajj* on Behalf of Others<sup>37</sup>

A question arises whether or not it is possible for someone to perform *hajj* on behalf of others, such as the father or the mother. Based on the *ḥadīth* of Ibn ʿAbbās and Ibn Sīrīn, al-Shāfi<sup>c</sup> declares that performing *hajj* on behalf of another is legitimate, because it is clearly mentioned in a *ḥadīth* of Ibn ʿAbbās that the Prophet was approached by a woman asking about her father's obligation to perform *hajj* but he was unable to make the journey because of old age. The reply given by the Prophet was that she could perform it on behalf of her father.<sup>38</sup>

However, according to al-Shāfi<sup>c</sup>'s opponent, this was not the practice (*ʿamal*) in Madīnah.<sup>39</sup> The latter also argues on the authority of Ibn ʿUmar that one cannot

<sup>35</sup> Cf. Ibn ʿAbd al-Barr al-Qurṭubī, *Kitāb al-Kāfī fī Fiqh Ahl al-Madīnah al-Mālikī*. Ed. Muḥammad Aḥīd. 1978. vol. I. Riyāḍ: Maktabat al-Riyāḍ al-Ḥadīthah, p. 176.

<sup>36</sup> *Ikhtilāf Mālik*. p. 226. The chain of transmitters of this *ḥadīth* are as follows: Mālik - Ibn Shihāb - ʿUbbad b. Ziyād [b. al-Mughīrah b. Shu<sup>c</sup>bah] - al-Mughīrah b. Shu<sup>c</sup>bah.

<sup>37</sup> *Ikhtilāf Mālik wa al-Shāfi<sup>c</sup>*. pp. 211-2.

<sup>38</sup> Al-Shāfi<sup>c</sup>, *Ikhtilāf al-Ḥadīth*. Ed. ʿĀmir Aḥmad Ḥaydar. 1985, Beirut: Mu'assasat al-Kutub al-Thaqāfiyyah, p.50.

<sup>39</sup> Al-Shāfi<sup>c</sup>, *Ikhtilāf Mālik wa al-Shāfi<sup>c</sup>*. p. 211.

perform the *ḥajj* on behalf of another. This statement is derived from analogical reasoning that fasting (*ṣiyām*) and prayer cannot be done by others. On this basis, al-Shāfi'ī's opponent comes to the conclusion that this *ḥukm* is also applicable to *ḥajj*.<sup>40</sup>

To counter this, al-Shāfi'ī argues that the opinion or *āthār* of someone other than the Prophet is of no weight or value and does not merit any consideration in judgements the moment it is explicitly opposing the *sunnah* of the Prophet.

He also advances his argument that one application of the *Sharī'ah*, such as *ṣalāt*, *ṣiyām* or others, cannot be compared to another. Therefore, according to al-Shāfi'ī, it is obviously wrong for someone to make judgements prohibiting the performing of *ḥajj* on behalf of another, simply based on the grounds of analogical reasoning.<sup>41</sup>

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<sup>40</sup> Al-Shāfi'ī, *Ikhtilāf al-Ḥadīth*. p. 50.

<sup>41</sup> *Ikhtilāf Malik*. p. 212; *Jimā' al-'Ilm*. p. 104.

## CHAPTER SIX: *KHABAR AL-WĀḤĪD*

### 6.1 Definition

Literally, *khavar al-wāḥīd* (pl. *akhbār al-āḥād*) means a tradition or report going back to one single authority.<sup>1</sup> Its synonyms are *khavar al-infirād* and *khavar al-khāṣṣah*<sup>2</sup>. However, scholars of *ḥadīth* have widened the meaning, interpreting *khavar al-wāḥīd* as what is narrated or reported by one or two authorities from one or two authorities back to the Prophet, or what is narrated by a number less than *mutawātir*.<sup>3</sup>

Normally, the scholars of *ḥadīth* divide reports into *mutawātir* and *āḥād*. *Mutawātir ḥadīth* is that narrated by a group of reliable and trustworthy individuals from a group of trustworthy persons going back to the Prophet. There is no exact number that institutes *tawātur*. Some say three, some say four while others say twenty. Al-Shāfi'ī himself refuses to specify the exact number of reporters at any particular level of the *isnād* that make a *ḥadīth mutawātir*.<sup>4</sup>

However, according to the Ḥanafite scholars, there is a third division of reports, i.e. *mashhūr*<sup>5</sup> which is a tradition related by one or two Companions from the Prophet

<sup>1</sup> Al-Tahānawī, *Kashshāf al-Iṣṭilāḥāt wa al-Funūn (Dictionary of the Technical Terms Used in the Sciences of the Muslims)*. 1862. Calcutta, vol. I. p. 412; al-Jurjānī, *al-Ta'rifāt*. 1983. Beirut: Dār al-Kutub al-'Ilmiyyah, p. 96-7.

<sup>2</sup> G. H. A. Juynboll, "*Khavar al-Wāḥīd*", *E. I.*, p. 896; al-Shāfi'ī, *Jimā' al-'Ilm*. p. 46.

<sup>3</sup> Muṣṭafā al-Sibā'ī, *al-Sunnah wa Makānatuhā fī al-Tashrī' al-Islāmī*. p. 167.

<sup>4</sup> See al-Shāfi'ī, *Jimā' al-'Ilm*. pp. 57-8 concerning the number of *mutawātir*. His opponent fails to convince him in this matter.

<sup>5</sup> See al-Baghdādī, *al-Kifāyah fī 'Ilm al-Riwāyah*. n.d., al-Madīnah al-Munawwarah, pp. 18, 25, 432; al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*. vol. II, 1985. Beirut: Dār al-Kutub al-'Ilmiyyah, pp. 273-384; Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*. vol. I, 1345H. Egypt: Maṭba'at al-Sa'ādah, pp. 119-139; Badrān, *Uṣūl al-Fiqh*

but which subsequently becomes *mutawātir*. In another words, it is in the form of *khavar al-wāḥid* in the first level of *isnād* (chain of transmitters) and becomes *mutawātir* by the second or third centuries<sup>6</sup> such as the *ḥadīth* "*innamā al-ʿmāl bi al-niyyāt*" - "actions are judged according to their intentions".

## 6.2 Scholars' Views About *Khavar al-Wāḥid*

Scholars are in disagreement as to whether *khavar al-wāḥid* should be considered as a conclusive proof for judgement in law.<sup>7</sup>

Such disagreement occurs right from the time of the Companion. They would not accept a *sunnah* based on an isolated *ḥadīth* (*khavar al-wāḥid*) unless they were satisfied that it came from the Prophet. Their methods were varied. For instance, Abū Bakr al-Ṣiddīq did not accept a solitary *ḥadīth* (*khavar al-wāḥid*) until two witnesses testified that they had heard it from the Prophet. Ibn Shihāb al-Zuhrī narrates from Qubaysah b. Dhu'ayb that a grandmother came to Abū Bakr asking for her share of inheritance. Abū Bakr said: "I do not find anything for you in the Book of Allāh, and I have not heard that the Messenger of Allāh said anything [about that]". Then he asked around and al-Mughīrah responded that he had heard that the Messenger of Allāh gave to a grandmother one-sixth. Abū Bakr asked, "Do you have someone [to support you]?" and Muḥammad b. Maslamah replied that he had also heard the same.

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*al-Islāmī*. n.d. al-Iskandariyyah: Mu'assasat Shabāb al-Jāmi'yyah. p. 80.

<sup>6</sup> Al-Jurjānī, *al-Taʿrīfāt*. p. 96-7.

<sup>7</sup> See Badrān Abū al-ʿAynayn Badrān, *Uṣūl al-Fiqh al-Islāmī*. pp. 87-88.

Therefore, Abū Bakr gave one-sixth of the share of the inheritance to the grandmother.<sup>8</sup>

ʿUmar b. al-Khaṭṭāb did the same. Some other Companions such as ʿAlī b. Abī Ṭālib would instead ask the transmitter of a *ḥadīth* to swear that he had heard it from the Prophet. In *al-Iḥkām fī Uṣūl al-Aḥkām*,<sup>9</sup> al-Āmidī mentions that ʿAlī said, "I used to hear a *ḥadīth* from the Prophet which God made me benefit from as He wishes. However, if any one narrated to me a *ḥadīth* in which there is no benefit for me, I would ask him to swear. Then, if he swears, I will trust him."<sup>10</sup>

It seems that the Companions had various methods of verifying before accepting reports related by a single Companion. They asked for witnesses and also a transmitter to swear an oath.

### 6.2.1 The Khawārij and the Muʿtazilah

They disagreed whether *khavar al-wāḥid* should be considered a conclusive proof for a legal judgement. They believe that *khavar al-wāḥid* is not to be accepted as conclusive proof because of the possibility of its falsehood. They argue that there is no practice (*ʿamal*) without knowledge (*ʿilm*) as stated in the Qurʾān,<sup>11</sup> which also

<sup>8</sup> For *ḥadīths* of grandmother's inheritance (*mīrāth al-jaddah*), see Ibn Mājah, (*farāʿiq*) 4; Abū Dāwūd, (*farāʿiq*) 5; *Muwattaʿ*, (*farāʿiq*) 4-6.

<sup>9</sup> Al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*. vol. I., p. 175.

<sup>10</sup> Cf. Muḥammad al-Khuḍarī Bek, *Tārīkh al-Tashrīʿ al-Islāmī*. pp. 93-4.

<sup>11</sup> *Al-Isrāʾ*: 26 and *al-Najm*: 28.



condemns following conjecture. In conclusion, they say that *khavar al-wāḥid* is not a proof for rulings of the *Sharīʿah*, as well as for theological matters.<sup>12</sup>

The Muʿtazilah rationalists [theologians] argue that the Companions such as Abū Bakr, ʿUmar, ʿAlī and ʿĀ'ishah did not take into account *khavar al-wāḥid*. One example includes Abū Bakr's decision to give one-sixth of the estate to a grandmother as mentioned earlier.<sup>13</sup> Their argument is that Abū Bakr did not accept the report of al-Mughīrah b. Shuʿbah until it was corroborated by Muḥammad b. Maslamah. Like Abū Bakr, ʿUmar, ʿAlī and others too did not accept *khavar al-wāḥid*.<sup>14</sup>

Likewise, the scholars who came after the Companions did not accept *khavar al-wāḥid*. In this regard, al-Shāfiʿī clarified that the motive of the Companions in rejecting *khavar al-wāḥid* was to prove that they were meticulously careful in quoting any *ḥadīth* from the Prophet. Therefore, asking for other witnesses was a method of ascertaining the veracity of the *ḥadīth*. In this regard, it is worthy to cite ʿUmar's caution to Abū Mūsā: "I do not suspect (*tuhmah*) you [of narrating falsehood], but it is a *ḥadīth* from the Prophet."<sup>15</sup>

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<sup>12</sup> Badrān, *Uṣūl al-Fiqh al-Islāmī*, p. 89.

<sup>13</sup> See chapter three above.

<sup>14</sup> Zakī al-Dīn Shaʿbān, *Uṣūl al-Fiqh al-Islāmī*, p. 61.

<sup>15</sup> *Ibid.*, p. 62.

### 6.2.2 Aḥmad b. Ḥanbal, Dāwūd al-Zāhirī and Ibn Ḥazm<sup>16</sup>

It is reported that Aḥmad b. Ḥanbal, Dāwūd al-Zāhirī<sup>17</sup> and Ibn Ḥazm considered *khavar al-wāḥid* as engendering definitive knowledge (‘ilm) and a conclusive proof (‘amal). They adduce proofs that ‘amal is necessarily engendered by *khavar al-wāḥid*. Among them is verse 6 of *al-Hujurāt*.<sup>18</sup> In this passage, God asks the believers to attest the reliability of those who carry messages. Thus, it can be inferred that a report from a reliable and trustworthy man should be accepted.<sup>19</sup>

It is also reported that the Prophet accepted the report from Salmān concerning *hadiyyah* (gift) and *ṣadaqah* (i.e. *zakāh*), even though he was the only one to report it. The Prophet also accepted the testimony of a bedouin about the appearance of a new moon. In addition, the Prophet sent ‘Alī and Mu‘ādh to teach people about Islam in single authority. To sum up, they believe that *khavar al-wāḥid* does establish both ‘ilm and ‘amal as is evident from the practice of the Prophet.

### 6.2.3 The Majority of Mālikites, Ḥanafites, Shāfi‘ites and Ḥanbalites

The majority of the followers of the *Sunnī madhhab* argue that *khavar al-wāḥid* does give the practice, not the knowledge, because there is no necessary link

<sup>16</sup> Badrān, p. 89.

<sup>17</sup> His name is Abū Sulaymān Dāwūd b. ‘Alī b. Dāwūd b. Khalaf al-Aṣḥānī (d. 270H). He was the first one who to adhere to *zāhir* text, holding only the Qur’ān and *sunnah*, rejecting *ra’y al-qiyās*. Among his works are *kitāb al-Ijmā‘*, *k. Ibtāl al-Qiyās*, *k. Ibtāl al-Taqlīd*, *k. Khavar al-Wāḥid* and *k. al-Khavar al-Mūjib li al-‘Ilm*. See Ibn al-Nadīm, *al-Fihrist*, p. 303.

<sup>18</sup> "O ye who believe! If an evil-liver bring you tidings, verify it, lest ye smite some folk in ignorance and afterward repent of what ye did". *Al-Hujurāt* (49): 6.

<sup>19</sup> Badrān, p. 87

between the *ʿamal* and *ʿilm* (knowledge). They argue that positive probability is sufficient in practical affairs and maintain that the conjecture referred to in the Qurʾān is conjecture on religious belief (*ʿaqīdah*) or theological matters, not practical ones.<sup>20</sup>

### 6.3 Al-Shāfiʿī and *Khabar al-Wāḥid*

According to al-Nawawī, al-Shāfiʿī was the first scholar to give a detailed written treatment of *khabar al-wāḥid*.<sup>21</sup> He devotes two chapters of his *al-Risālah*,<sup>22</sup> two-thirds of *Jimāʿ al-ʿIlm*<sup>23</sup> and the introduction of *Ikhtilāf al-Ḥadīth*<sup>24</sup> to *khabar al-wāḥid*.

The reason for devoting so much treatment to *khabar al-wāḥid* may well have been due to the growing ascendancy of the Muʿtazilah during the latter part of al-Shāfiʿī's life. In his promotion of the importance of *khabar al-wāḥid*, al-Shāfiʿī was attempting to defend the authority of the *sunnah* of the Prophet, and limited the use of reason. It is also a fact that most *ḥadīths* are in the form of *khabar al-wāḥid*.

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<sup>20</sup> Badrān, p. 91.

<sup>21</sup> Juynboll, "*khabar al-wāḥid*", *E.I.*, p. 896. Also see al-Nawawī, *Sharḥ Saḥīḥ Muslim*. Cairo 1349. vol. I, p. 131. Cf. Ahmad Hasan, *The Early Development of Islamic Jurisprudence*. pp. 181-2.

<sup>22</sup> *Al-Risālah* deals with *khabar al-Khāṣṣah* or *khabar al-Wāḥid*, pp. 369-471.

<sup>23</sup> Al-Shāfiʿī devotes the second chapter of *Jimāʿ al-ʿIlm* to dealing with those who reject only *khabar al-khāṣṣah*.

<sup>24</sup> The last of the three books in chronological order in which al-Shāfiʿī uses the same method to adduce the proofs why *khabar al-khāṣṣah* or *khabar al-wāḥid* should be accepted. A repetitive method is obvious in al-Shāfiʿī's writings. It could be that he lived in the time when *khabar al-khāṣṣah* was no longer being accepted. Or it could be that regional practises had undermined the *sunnah* of the Prophet. Details of this can be found in J. Schacht, *The Origins of Muhammadan Jurisprudence*.

In the chapter on the *Khabar al-Wāḥid* of the *al-Risālah*, al-Shāfiʿī debates with an unnamed opponent. The discussions are about the authority of *khabar al-wāḥid*. There are strict conditions laid down by al-Shāfiʿī regarding the acceptance of *ḥadīths*. This includes the acceptance of reports only from reliable men (*thiqāt*). He makes a distinctive comparison between the acceptance of *ḥadīth* and the acceptance of legal testimony (*shahādah*).

In another chapter, i.e. *al-Hujjah fī Tathbīt Khabar al-Wāḥid*, al-Shāfiʿī adduces a variety of proofs to show the validity of *khabar al-wāḥid* and that its acceptance has had a basis from the early period of Islam. For instance, the Messenger of Allāh used to send a single messenger to Muslim territories as *qāḍī* (judges) or preacher. If they were not a *hujjah*, the Prophet would not have sent them to the people. As an example, a man came to the people of Qubā' while they were performing *ṣalāh*.<sup>25</sup> He told them that the direction of the *qiblah* had been changed. Spontaneously, they turned to the new direction. According to al-Shāfiʿī, this shows that reports of reliable persons should be accepted by Muslims. In *Early Development of Islamic Jurisprudence*, Ahmad Hasan comments that the way al-Shāfiʿī adduces his arguments does not establish the validity of *khabar al-wāḥid*. On the contrary, it proves that *ḥadīth* as a whole must be accepted, not just the *khabar al-wāḥid*.<sup>26</sup>

<sup>25</sup> Cf. al-Shāfiʿī, *al-Sunan al-Ma'thūrah*. pp. 132-2, *ḥadīth* no. 35.

<sup>26</sup> Ahmad Hasan, *The Early Development of Islamic Jurisprudence*. p. 182.

Al-Shāfi'ī argues that a *khābar al-wāḥid* only constitutes a decisive proof (*ḥujjah*) if there is a reliable transmitter (*thiqah*) at every stage of the *isnād*. His reliability is dependent on the following six conditions<sup>27</sup>:

1. that the reporter should have a strong faith;
2. that he should be known for his veracity in transmitting *ḥadīth*;
3. that he must be able to grasp the meaning of what he transmits;
4. that he should pay heed to the exact wording;
5. that he should transmit from memory, and
6. that he should be free from *tadlīs*, that is claiming to transmit what he had not in fact heard from the *rāwī* he names.

#### 6.4 Conditions Laid Down by *Madhāhib* for the Acceptance of *Khābar al-Wāḥid*

There is no agreement among scholars on the conditions for the acceptance of *khābar al-wāḥid*. In fact, each school of thought lays down its own conditions.

##### 6.4.1 The Ḥanafites

According to the Ḥanafites, the transmitter of a *ḥadīth* should not have adopted a different practice from the one which he narrated, because he will normally not adopt a practice contrary to his own transmission unless there is a definitive proof of the narration having been abrogated. Accordingly, if he opposes his own transmission,

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<sup>27</sup> Al-Shāfi'ī, *al-Risālah*, p. 370.

the consideration will be on his practice, not his transmission. For that reason, the Ḥanafites reject the *ḥadīth* narrated by Abū Hurayrah, "when a dog licks from one of your containers, he should wash it seven times in which one of it should be with sand". They say that it is sufficient to cleanse it three times because the transmitter's practice was contrary to what he transmitted.<sup>28</sup>

In addition to that, a *ḥadīth* should not be contrary to matters of *‘umūm al-balwā*. *‘Umm al-balwā* are matters each and every Muslim ought to know, for its ignorance may affect the validity of certain rituals in his daily life. For instance, the touching of the penis with the palms of one's hands invalidates *wuḍū’*. On the same basis, the Ḥanafites reject the *khābar al-wāḥid* transmitted by Abū Hurayrah concerning the recitation of the *Basmalah* aloud.<sup>29</sup>

Thirdly, a *ḥadīth* should not contradict what is stronger than it in terms of conclusive proof, i.e. the Qur’ān, *sunnah mutawātirah* or *mashhūr*.

Furthermore, a *ḥadīth* should not contradict *qiyās* and the basic fundamentals of *Sharī‘ah*.

#### 6.4.2 The Mālikites

The Mālikites have only one condition in accepting *khābar al-wāḥid*, namely, that it should not contradict *ijmā‘ ahl al-Madīnah* and their *‘amal*. The justification given by them is that *‘amal ahl al-Madīnah* is based on the premise that it comes as

<sup>28</sup> Badrān, *Uṣūl al-Fiqh al-Islāmī*. p. 95-97; Sha‘bān, *Uṣūl al-Fiqh al-Islāmī*. p. 64.

<sup>29</sup> Abū Ḥanīfah, *Musnad al-Imām Abī Ḥanīfah*. pp. 55-6. *ḥadīth* no. 99-100. He prefers (*tarjīh*) the *ḥadīth* of Ḥammād - Anas which tells that the Prophet, Abū Bakr and ‘Umar did not say *basmalah* aloud.

a general transmission from the Prophet and that the transmission of many is better than the transmission of individuals.<sup>30</sup> *ʿAmal* is considered as a normative concept, while *khavar al-wahid* sometimes contains legal texts which are normative matters and contains unusual or purely personal types of behaviour.<sup>31</sup> Therefore *ʿamal* is given priority over *khavar al-wahid*.

For instance, they deny the validity of *khiyār al-majlis* which is based on certain *ḥadīth* for the *ʿamal ahl al-Madīnah* is contrary to it.<sup>32</sup>

#### 6.4.3 The Shāfiʿites

According to al-Shāfiʿī, for a *khavar al-wahid* to be accepted, it must have reliable *isnād* (*ṣaḥīḥ al-sanad*) and have a continuous chain of authorities (*muttaṣil*). He does not accept a *ḥadīth* with an interrupted chain of transmitters such as the *mursal ḥadīth*,<sup>33</sup> unless it has one of the following conditions:<sup>34</sup>

- i. that the *mursal ḥadīth* is supported by a *ḥadīth* which is *muttaṣil al-sanad* in meaning. In this case, the argument is based on that of the *muttaṣil*, not the *mursal*,

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<sup>30</sup> Badrān, p. 99.

<sup>31</sup> Umar Fārūq Abd Allāh, "Mālik's Concept of *ʿAmal* in the Light of Mālikī Legal Theory". p. 348.

<sup>32</sup> Muḥammad Ḥasan Hītū, *al-Wajīz fī Uṣūl al-Tashrīʿ al-Islāmī*. 1983. Beirut: Mu'assat al-Risālah, p. 302.

<sup>33</sup> A *mursal ḥadīth* is a *ḥadīth* whereby a *Ṣaḥābī* is missed from the *sanad*. A detail of this topic will be discussed later on Chapter Seven: al-Shāfiʿī and *Mursal Ḥadīths*.

<sup>34</sup> Badrān, pp. 99-100.



- ii. that the *mursal ḥadīth* is strengthened by other *mursal ḥadīths* accepted by *ahl al-ʿilm*,
- iii. that the *mursal ḥadīth* is in agreement with the opinion of Companions, or
- iv. that *ahl al-ʿilm* accept the *mursal*.

If a *mursal ḥadīth* meets one of these conditions and the transmitters are among the older Successors (*kibār al-tābiʿīn*) who have met many of the Companions, then it will be accepted. For that same reason, al-Shāfiʿī accepts the *mursal ḥadīths* of Saʿīd b. al-Musayyab and al-Ḥasan al-Baṣrī.

#### 6.4.4 The Ḥanbalites

As far as Aḥmad b. Ḥanbal's view is concerned, he did not require any condition in order to accept *khābar al-wāḥid*. However, he just requires the four agreed conditions, i.e. that a transmitter must be mature, Muslim, ʿadl and *qābiḥ*.<sup>35</sup>

#### 6.5 The Authority of *Khābar al-Wāḥid*

In order to examine what al-Shāfiʿī writes about the authoritativeness of *khābar al-wāḥid* and the necessity for accepting such *ḥadīths*, it is hereby vital to

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<sup>35</sup> Zakī al-Dīn Shaʿbān, *Uṣūl al-Fiqh al-Islāmī*, p. 63.



make a comparative study of al-Shāfi'ī's works *al-Risālah*,<sup>36</sup> *Ikhtilāf al-Ḥadīth*<sup>37</sup> and *Jimā' al-ʿIlm*.<sup>38</sup>

According to al-Shāfi'ī, the minimum proof for a *ḥadīth* to be binding proof upon *ahl al-ʿilm* is that it is related by one person from another until it reaches the Prophet, or one next to the Prophet. Such a *khābar al-wāḥid* will not be a binding proof unless certain conditions are fulfilled.<sup>39</sup> These are as follows;

- i. that those who relate the *ḥadīth* must be *thiqah* (truthworthy) in religion;
- ii. that they must be known to be truthful (*ṣidq*) in their *ḥadīth*;
- iii. that they must comprehend (*ʿāqilan*) what they transmit;
- iv. that they must be conversant with any term which might change (*iḥālat al-maʿnā*) the meaning of the *ḥadīth*;
- v. that they must be capable of transmitting the *ḥadīth* word for word as they heard it and not merely transmitting its meaning in their own words, for if they transmit only the meaning and are unaware of what might alter the sense, they might unknowingly change the lawful (*ḥalāl*) into the unlawful (*ḥarām*). If they transmit word for word there remain no grounds for fearing a change of meaning;

<sup>36</sup> See al-Shāfi'ī, *al-Risālah*. Ed. Aḥmad Muḥammad Shākir. 2nd ed. Cairo: Dār al-Turāth, 1979/1399.

<sup>37</sup> The first part of *Ikhtilāf al-Ḥadīth* is devoted to arguments about *tathbīt khābar al-wāḥid*. See al-Shāfi'ī, *Ikhtilāf al-Ḥadīth*. Ed. Muḥammad Aḥmad ʿAbd al-ʿAzīz. 1987. Beirut: Dār al-Kutub al-ʿIlmiyyah, pp. 11-40.

<sup>38</sup> The second chapter of *Jimā' al-ʿIlm* deals with *khābar al-khāṣṣah*. See al-Shāfi'ī, *Jimā' al-ʿIlm*. Ed. Aḥmad Muḥammad Shākir, 1940. Egypt: Maṭbaʿat al-Maʿārif, pp. 46-101.

<sup>39</sup> *Al-Risālah*. p. 369.

vi. that they should have learned the *ḥadīth* by heart (*ḥāfiẓ*). If they relate it from memory (*ḥifẓ*) and they should have memorized the written text (*kitāb*) if they relate it in written form; when they share a *ḥadīth* with others [of *ahl al-ḥifẓ*], that which they relate must agree;

vii. that they must not be guilty of *tadlīs*, i.e. claiming to relate *ḥadīths* from those whom they met without actually having heard the *ḥadīths* from them.<sup>40</sup>

Al-Shāfi'ī makes some sort of a comparison between accepting *khābar al-wāḥid* and accepting testimony (*shahādah*), for the one to whom al-Shāfi'ī had spoken might be familiar with the procedure of a testimony. That is, when witnesses are considered as trustworthy in the eyes of a judge, their testimonies should be accepted. Thus, to make it clear in his opponent's mind, al-Shāfi'ī makes the comparison to deliberate how the authoritativeness of *khābar al-wāḥid* is to be accepted.

## 6.6 Proofs of the Acceptability of *Khābar al-Wāḥid*

In al-Shāfi'ī's view, the authoritativeness of *khābar al-wāḥid* is strong enough not to need comparisons with anything else. Indeed, it is *sui generis*<sup>41</sup> (*aṣl fī nafsih*), not needing other kinds of proof to make it acceptable. Once it has been firmly established that the *khābar al-wāḥid* comes from the Prophet, it becomes a binding proof (*ḥujjah*) upon Muslims. Thus, it cannot be rejected unless there is an indication

<sup>40</sup> *Al-Risālah*. paras. 1000-1001.

<sup>41</sup> *Al-Risālah*. paras. 1051, 1166; *Ikhtilāf al-Ḥadīth*. p. 20.

of it being abrogated or there exists a mistake.<sup>42</sup> No questions of either "why" (*limā*) or "how" (*kayfa*) should be asked concerning reports from the Prophet.<sup>43</sup>

When posing the question as to why *khavar al-wāḥid* should be accepted in legal frameworks, al-Shāfi'ī lays down a few sources to prove it. They could be categorised into *ijmā'*, *ḥadīth*, *qiyās*, the practice of Companions and the *sunnah* of the Prophet.

#### 6.6.1 *Ijmā'*

According to al-Shāfi'ī, the people of knowledge<sup>44</sup> agreed on the necessity of accepting *khavar al-wāḥid* in practical matters. It is said that they accept it and also issue *fatwā* based on it.

#### 6.6.2 *Ḥadīth*

Al-Shāfi'ī cites a *ḥadīth* which reads as follow;

"God will grant prosperity to a servant of His who hears my words, remembers them, guards them, and hands them on. It might be that a transmitter of *fiqh* is not a *faqīh*, and it might be that a transmitter of *fiqh* may transmit to others are more versed in *fiqh* than himself. The heart of a Muslim will never harbour vindictive feelings against three: sincerity in working for God; faithfulness to Muslims; and conformity to the community of believers-their call will protect [the believers] and guard them from delusion".<sup>45</sup>

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<sup>42</sup> *Ikhtilāf al-Ḥadīth*. p. 24.

<sup>43</sup> *Ikhtilāf al-Ḥadīth*. p. 21.

<sup>44</sup> *Al-Risālah*. paras. 1247-9.

<sup>45</sup> *Al-Risālah*. para. 1102.

Al-Shāfi'ī comments on the above *ḥadīth* by saying that since the Prophet urged men to listen to his words, guard them, and hand them on, and since the transmitter who hands them is mentioned in the singular, this indicates that the Prophet ordered that no one should transmit anything from him unless proof was established to the person to whom it was transmitted, because what is transmitted is something lawful to be observed or unlawful to be avoided, a punishment to be inflicted, a property to be taken or paid, and an advice in matters relating to religion and worldly life.<sup>46</sup>

### 6.6.3 The Practice of the Companions

In *al-Risālah*, al-Shāfi'ī gathered together many examples which show that even though a *ḥadīth* is related by a single person, whether a man or a woman, it becomes a proof for those who hear it, on condition that the transmitters are reliable and trustworthy.

There are several *ḥadīths* related by only one person which are used in Islamic jurisprudence. Examples include the *ḥadīth* of Umm Salamah about kissing during Ramaḍān, the changing of the *qiblah* and *tahrīm al-khamr* (the banning of alcoholic drinks). These demonstrate that *ḥadīths* related by a single person were taken as proof by those who heard them. Thus, a person has no right to reject it on the grounds that it is a solitary *ḥadīth*.

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<sup>46</sup> *Al-Risālah*, para. 1103.

To support the *khavar* reported by a single transmitter, al-Shāfi'ī uses the example of the Prophet's anger with a man who had doubted his own wife's report from Umm Salamah that kissing during the fast was permitted.<sup>47</sup>

In another case, Abū Talḥah and others destroyed immediately all their wine when a messenger told them that wine had been forbidden to Muslims. Al-Shāfi'ī demonstrates that in this case and in others, the Companions did not query the authority of a single transmitter. They did not raise the argument that they would not accept the *ḥadīth* until many transmitters had related it or they had heard it directly from the Prophet himself.<sup>48</sup>

Therefore, when discussing transmitters, al-Shāfi'ī lays emphasis on their quality. If they are reliable and truthful, their reports should be accepted.

#### **6.6.3.1 Cases When Companions Changed Decisions When A *Ḥadīth* Came to Them.**

Al-Shāfi'ī quotes many occasions where some Companions changed decisions which they had made earlier when a *ḥadīth* related by a single authority came to their notice. In this regard, a *ḥadīth* from the Prophet takes precedence whenever it contradicts decisions made based on personal opinion (*ijtihād*). 'Umar b. al-Khaṭṭāb for instance, changed his decision on *diyat al-aṣābi*<sup>c</sup> (bloodmoney or compensation that should be paid to the victim whose damages or injury involved the fingers)<sup>49</sup>

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<sup>47</sup> *Al-Risālah*, paras. 1109-1111.

<sup>48</sup> *Al-Risālah*, paras. 1120-3.

<sup>49</sup> *Al-Risālah*, paras. 1160-1171.

when he was about to give a judgement based on his opinion.<sup>50</sup> Sa'īd b. al-Musayyab reported that 'Umar's initial decision was based on the beauty and the utility of the fingers. However, he changed his mind when he found a letter of 'Amr b. Ḥazm' s family which stipulated that the Prophet had given a verdict of ten camels for each finger.<sup>51</sup>

Other instances of 'Umar's changing his judgements on the basis of *ḥadīth* from one transmitter are the cases of *diyat al-ʿāqilah*,<sup>52</sup> and the taking of *jizyah* (polltax) from the Magians<sup>53</sup>.

In the case of *diyat al-ʿāqilah*, Sufyān relates on the authority of al-Zuhrī, that Sa'īd b al-Musayyab said, "'Umar b. al-Khaṭṭāb was saying that *diyyah* should be paid to the *ʿāqilah*, and a wife cannot inherit from the *diyyah* of her husband; but al-Ḍaḥḥāk b. Sufyān told 'Umar that the Apostle had written to him ordering him to permit the wife of Ashyam al-Dibābī<sup>54</sup> to inherit the *diyyah* of her husband. So, 'Umar changed his opinion".<sup>55</sup>

In the case of the Magians, Ja'far al-Ṣādiq b. Muḥamad al-Bāqir said, "Upon mentioning the Magians, 'Umar said: I do not know what we should do with regard to them." Thereupon 'Abd al-Raḥmān b. 'Awf said: "I bear witness that I heard the

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<sup>50</sup> *Al-Risālah*. para. 1175.

<sup>51</sup> *Al-Risālah*. paras. 1160-1165.

<sup>52</sup> *Al-Risālah*. paras. 1172-1180.

<sup>53</sup> *Al-Risālah*. paras. 1182-1186.

<sup>54</sup> Ashyam al-Dibābī is a Companion who had mistakenly been killed during the time of the Prophet. See Shākir's edition of *al-Risālah*. p. 427.

<sup>55</sup> Cf. Majid Khadduri, *Islamic Jurisprudence*. p. 263.

Prophet said: Follow the same usage with them as you do with the People of the Book (*ahl al-Kitāb*).<sup>56</sup> In this case, ʿUmar was reported as not having collected *jizyah* from the Magians except after ʿAbd al-Rahmān b. ʿAwf had told him what the Prophet did.

It is interesting to examine why, in cases of a single transmitter, ʿUmar asked for others who knew those *ḥadīths*. In justifying this, al-Shāfiʿī gives three reasons. First, ʿUmar might have been cautious, for even though a *khavar al-wāḥid* is a proof, a *khavar* related by two or three persons is better. Second, he might not have known the transmitter, so he suspended judgement before accepting it until someone else has testified to the personality of the transmitter. Thirdly, it might be that ʿUmar would not accept the transmitter's *ḥadīth*, until he had found someone else whose *ḥadīth* he would accept.<sup>57</sup>

This statement can be referred to Abū Mūsā's case of *isti'dhān* in which ʿUmar asked him if he has anyone else to support him.

#### 6.6.4 The *Sunnah* of the Prophet

Al-Shāfiʿī argues that the Prophet had sent many Companions to different territories to teach them about Islam on the basis that those Companions were *thiqāh* and truthful in his eyes and in the eyes of those to whom they had been sent. Therefore, if a *ḥadīth* related by a single Companion is not considered as a proof, the Prophet would not have sent single Companions.

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<sup>56</sup> Al-Shāfiʿī, *al-Risālah*. p. 430.

<sup>57</sup> *Al-Risālah*. paras. 1188-1198.

The authoritativeness of one *thiqah* transmitter can be seen in the event of the changing of the direction of the *qiblah*. While the congregation were performing prayer at Qubā', a messenger came to them telling that the direction of the *qiblah* had been changed. They immediately turned to the new direction. Al-Shāfi'ī repeats this anecdote frequently emphasising that the Companions did not refuse to accept this *ḥadīth* simply because it was reported to them by only one person, or argued whether it had been reported by numerous people, or even preconditioned that if they had heard it themselves, they would accept it.

Al-Shāfi'ī also quotes many Qur'ānic<sup>58</sup> passages which showed that Allāh had sent single messengers to certain nations. This demonstrates that they are a proof, and whatever they delivered from God is authentic and authoritative and no one can reject it on the premise that they are single individuals.<sup>59</sup>

### 6.7 The Implication of *khābar al-Wāḥid*

Scholars differ as to whether or not *khābar al-wāḥid* engenders definitive knowledge as is the case with *khābar mutawātir*, or just probable knowledge (*ẓann*)? Their views can be divided into three categories.

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<sup>58</sup> *Nūḥ*: 1; *Hūd*: 25; *al-Mu'minūn*: 23; *al-Ankabūt*: 14; *al-Nisā'*: 163; *al-A'rāf*: 65; *Hūd*: 50; *al-A'rāf*: 73; *Hūd*: 61; *al-A'rāf*: 85; *Hūd*: 83; *al-Ankabūt*: 36; *al-Shu'arā'*: 160-3; *al-Nisā'*: 163; and *Āl 'Imrān*: 144.

<sup>59</sup> *Al-Risālah*. pp. 435-7.



### 6.7.1 *Zann*

The majority of scholars<sup>60</sup> hold that *khavar al-wāḥid* does imply a probable knowledge (*zann*) whether or not it is accompanied by a *qarīnah* (contextual support).

### 6.7.2 Definitive Knowledge (*‘Ilm*)

Most of the *ahl al-ḥadīth*,<sup>61</sup> and the Zāhirīs hold that *khavar al-wāḥid* engenders definitive knowledge. It is reported that Aḥmad b. Ḥanbal is believed to have held to this view whether or not there is a *qarīnah*. This report is criticized by Ibn Badrān al-Dawmī al-Dimashqī<sup>62</sup> who says that this notion was wrongly ascribed to Aḥmad b. Ḥanbal. In addition, Ibn Qudāmah notes a dispute about the narration of Aḥmad concerning this. The majority of Ḥanbalites hold that *khavar al-wāḥid* does not engender definitive knowledge.

According to al-Ḥafnāwī<sup>63</sup>, the most correct view associated with Aḥmad b. Ḥanbal is that the latter held that *khavar al-wāḥid* does engender definitive knowledge. Al-Ḥafnāwī further elaborates the second opinion ascribed to the scholar which stipulates that *khavar* accompanied by *qarīnah* engenders definitive knowledge,

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<sup>60</sup> Al-Ghazālī, *al-Muṣṭasfā fī ‘Ilm al-Uṣūl*. Ed. Muḥammad ‘Abd al-Salām ‘Abd al-Shāfī. 1993. Beirut: Dār al-Kutub al-‘Ilmiyyah, pp. 116-128, 158.

<sup>61</sup> Ibn Badrān, *al-Madkhal ilā Madhhab al-Imām Aḥmad*. n.d. Dimashq: Dār Iḥyā’ al-Turāth al-‘Arabī, p. 91; Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*. vol. I. p. 107; al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, vol. I. p. 234.

<sup>62</sup> Al-Ḥafnāwī, Muḥammad Ibrāhīm, *Dirāsāt Uṣūliyyah fī al-Sunnah al-Nabawiyyah*. 1991. Dār al-Wafā’. p. 171 citing *Nuzhat al-Khāṭir*. vol. I. p. 261.

<sup>63</sup> Al-Ḥafnāwī, *Dirāsāt Uṣūliyyah fī al-Sunnah al-Nabawiyyah*. p. 171.

such as reports on the sighting of a new moon (*ru'yat al-hilāl*) and supported by Qur'ānic verses on the same issue.

Among the proofs substantiated by this group is the event of Qubā' and the Qur'ānic verse 6 of *al-Hujurat*. Referring to *al-Hujurat*: 6, they argued that this verse definitely shows the acceptance of *khavar al-wāḥid* is without any verification. If his *khavar* does not engender definitive knowledge, God will ask the reporter to verify until it brings about definitive knowledge.<sup>64</sup> They argue<sup>65</sup> that the fact that Allāh requires it to be put into practice (*amal*) necessarily shows the knowledge of its truth.

### 6.7.3 Definitive Knowledge If Accompanied by Circumstantial Evidence (*Qarīnah*)

According to some scholars like al-Rāzī, al-Āmidī, Ibn al-Ḥāḥib, Ibn al-Subkī and others,<sup>66</sup> that *khavar al-wāḥid* will engender definitive knowledge if accompanied by *qarīnah*.

Al-Rāzī says that sometimes *qarīnah* does engender definitive knowledge. Those who investigate the customary practice (*urf*) thoroughly will find that there were no grounds for arguing the certainty of *khavar* except by *qarīnah*.<sup>67</sup>

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<sup>64</sup> Al-Ḥafnāwī, p. 172.

<sup>65</sup> Al-Khaṭīb al-Baghdādī, *al-Kifāyah*, p. 25.

<sup>66</sup> Al-Ḥafnāwī, *Dirāsāt Uṣūliyyah*, p. 175.

<sup>67</sup> Al-Rāzī, *al-Maḥṣūl fī 'Ilm al-Uṣūl*, 1988, Beirut: Dār al-Kutub al-'Ilmiyyah, vol. II, pp. 402-3.

The preferred notion of al-Āmidī<sup>68</sup> is that *khavar al-wāḥid* will give definite knowledge if it has been accompanied by *qarīnah*. According to Ibn al-Ḥāḥib,<sup>69</sup> *khavar al-wāḥid* reported by a just person will bring about definite knowledge (*ilm*) on condition of an existing *qarīnah*.

## 6.8 *Khavar al-Wāḥid* and Preference

### 6.8.1 *Khavar al-Wāḥid* v *Umūm al-Balwā*

Is it possible to use *khavar al-wāḥid* as an argument when it comes to a case which is of general interest or is well known among people?

The majority of *uṣūlī* scholars, al-Shāfi'ī and *ahl al-ḥadīth* have a view that the acceptance of *khavar al-wāḥid* and the argumentation concerning it is possible as long as its *sanad* (chain of transmitters) is correct.<sup>70</sup>

Abū al-Ḥasan al-Karkhī of the earlier Ḥanafites<sup>71</sup> and all of the later Ḥanafites hold the opposite view, i.e. they do not accept it and therefore it does not have any effect in law.<sup>72</sup>

<sup>68</sup> Al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*. vol. I. p. 234.

<sup>69</sup> Al-Khinn, Muṣṭafā Sa'īd, *Athar al-Ikhtilāf fī al-Qawā'id al-Uṣūliyyah fī Ikhtilāf al-Fuqahā'*. 2nd ed. 1982, Beirut: Mu'assasat al-Risālah, p. 426 citing Ibn al-Ḥāḥib, *Muntahā al-Wuṣūl wa al-ʿAmal*. p. 71.

<sup>70</sup> Al-Khinn, Muṣṭafā Sa'īd, *Athar al-Ikhtilāf fī al-Qawā'id al-Uṣūliyyah fī Ikhtilāf al-Fuqahā'*. p. 426.

<sup>71</sup> Al-Ḥajawī had summarised Abū Ḥanīfah's view on *khavar al-wāḥid* as follows. Abū Ḥanīfah actually put *khavar al-wāḥid* into effect (*amal*) on certain conditions that; a *rāwī* does not practice contrary to his transmission; that it would not be of the *umūm al-balwā*; that it would not oppose *qiyās* and that its *rāwī* is *faqīh*. If all conditions are fulfilled, Abū Ḥanīfah would take it into account even if the *ḥadīth* is *ḍa'eef al-sanad*. see al-Ḥajawī, *al-Fikr al-Sāmī*. vol. I. p. 356.

<sup>72</sup> Al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*. vol. I. p. 198.

The first group adduces three pieces of evidence favouring their stand,<sup>73</sup>

- i. that the text of *ḥadīth* concerning the acceptance of *khavar al-wāḥid* is *muṭlaq* and that there is no difference whether or not it involves a matter of *‘umūm al-balwā*.
- ii. that there is a consensus of the Companions on putting *khavar al-wāḥid* into effect on a matter which is of *‘umūm al-balwā*. For instance, it is narrated from Ibn ‘Umar that he said, "we have been practising *mukhābarah* for forty years, we didn't think there was any harm in it until Rāfi‘ b. Khadīj told us that the Prophet had forbidden it, therefore we withdrew from it".

The latter group argues that customary practice (*‘ādah*) does show superabundant transmission of the *‘umūm al-balwā*. For instance, if touching the penis was something which invalidated purity (*ṭahārah*), the Prophet would have publicized it and would not have restricted it to single individuals. In other words, he would tell it to a number which is unquestionable, like the *mutawātir*, in order to avoid the invalidity of prayer for example. Therefore, according to them, the fact that this *ḥadīth* was only transmitted by a single person, despite the fact that it should have been narrated by many people, shows either the transmitter's falsehood, his negligence or the possibility that what he narrated had been abrogated.<sup>74</sup>

Disagreement on this principle affects many rulings of *fiqh*. Among these are;

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<sup>73</sup> Al-Khinn, *Athar al-Ikhtilāf*. pp. 426-7.

<sup>74</sup> Al-Āmidī, *al-Iḥkām*. vol. I, p. 198; Al-Khinn, *Athar al-Ikhtilāf*. p. 427 citing al-Bukhārī, ‘Abd al-‘Azīz, *al-Kashf*. vol. III. p. 17.

### 6.8.1.1 Nullifying *Wuḍū'* by Touching Penis

The majority of *fuqahā'*<sup>75</sup> including al-Shāfi'ī, Aḥmad b. Ḥanbal, Dāwūd al-Zāhirī and others hold the view that touching one's penis with one's hand nullifies *wuḍū'*.<sup>76</sup> However, al-Shāfi'ī restricts the condition to the touching of it with the palms of the hand.

Their argument is based on the *ḥadīth* of Busrah bint Ṣafwān where the Prophet said, "Whoever touches his penis should not do the prayer until he has done *wuḍū'*".<sup>77</sup> In another narration, she related that she had heard the Messenger of Allāh saying, "and the one who touches his penis shall take *wuḍū'*".<sup>78</sup>

The Ḥanafites hold that touching the penis does not nullify *wuḍū'*, based on the *ḥadīth* of Qays b. Ṭalq b. 'Alī where he asked the Prophet about whether or not one who touches his penis has to take *wuḍū'*.<sup>79</sup> The Prophet was said to have replied: "No, it isn't necessary because [penis] is a part of your body".<sup>80</sup> Therefore, they rejected the *ḥadīth* of Busrah bint Safwān because it was a *khābar* reported by a single person on a matter of *'umūm al-balwā'*.<sup>81</sup> To justify this, al-Sarakhsī, in his *Mabsūṭ*, cites Yaḥyā b. Ma'īn that the *ḥadīth* of Busrah is unreliable on the grounds that it is illogical for

<sup>75</sup> Al-Khinn, *Athar al-Ikhtilāf*, p. 468.

<sup>76</sup> Ibn Rushd, *Bidāyat al-Mujtahid*, 2nd. ed. Lahore: al-Maktabah al-Ilmiyyah, vol. I, p. 27.

<sup>77</sup> text "*man mass dhakarah falā yuṣallī ḥattā yatawaḍḍa'*".

<sup>78</sup> "*wa yatawaḍḍa' man massa al-dhakar*".

<sup>79</sup> Ibn Rushd, *Bidāyat al-Mujtahid*, vol. I, p. 28.

<sup>80</sup> *Riwayat al-Nasā'i wa Aḥmad*.

<sup>81</sup> Al-Khinn, *Athar al-Ikhtilāf*, p. 469.

the Prophet not to have said it in the presence of his great Companions for none of them narrated it. Furthermore, it was narrated by Busrah, a woman, whereas the Prophet was very shy with unmarried woman.<sup>82</sup>

#### 6.8.1.2 Reciting the *Basmalah* Not Loud<sup>83</sup>

According to al-Shāfi'ī,<sup>84</sup> those who perform prayer wherein *al-Fātiḥah* is recited together with other *sūrahs* have to raise their voice during the recitation of *Basmalah* (*Bismillāh al-Raḥmān al-Raḥīm*) as well as the rest of *al-Fātiḥah*. He bases his argument on the *ḥadīth* of Anas b. Mālīk that, "Mu'āwiyah had performed the *ṣalāh* at Madīnah, in which he raised his voice. After that, he recited *Bismillāh al-raḥmān al-raḥīm* for *Umm al-Qur'ān*, but he did not recite *basmalah* for the *sūrah* after *al-Fātiḥah* until he had finished it, and he did not say the *takbīr* when he was about [to change the position] until he had finished that *ṣalāh*. When he gave *salām*, those of the *muhājirīn* who heard that shouted at him: "O Mu'awiyah! Did you steal the *salāh* or have you forgotten? When he performed *ṣalāh* after that, he recited *Bismillāh al-raḥmān al-raḥīm* for the *sūrah* which is after the *al-Fātiḥah*, and said *takbīr* when he intended to perform *sujūd*".<sup>85</sup>

<sup>82</sup> Al-Khinn, *Athar al-Ikhtilāf*, p. 469 citing Al-Sarakhsī, *al-Mabsūf*, vol. I, p. 66.

<sup>83</sup> For details of disagreement of whether or not *basmalah* should be recited together with *al-fātiḥah*, see Ibn Rushd, *Bidāyat al-Mujtahid*, vol. I., pp. 89-90.

<sup>84</sup> For instance al-Shāfi'ī, *al-Sunan al-Ma'thūrah*, *ḥadīth* no. 40-43.

<sup>85</sup> Al-Shāfi'ī, *al-Umm*, vol. I, p. 108; *al-Sunan al-Ma'thūrah*, p. 138, *ḥadīth* no. 43.

There is another *ḥadīth* related by Qatādah which seems to contradict the above *ḥadīth*. He says, the fact that the Prophet, Abū Bakr and ʿUmar were starting the recitation with *al-ḥamd lillāh rabb al-ʿālamīn*. This has been interpreted by al-Shāfiʿī to mean that they started reciting *Umm al-Qurʾān* before they recited *sūrahs* after it. It does not mean that they were abandoning *Bismillāh al-raḥmān al-raḥīm*.<sup>86</sup>

The Ḥanafites<sup>87</sup> hold, based on many *ḥadīths* that the *basmalah* should be recited silently (*sirr*).<sup>88</sup> One of the *ḥadīths* was narrated by Anas, who said: "I performed prayer with the Prophet, Abū Bakr, ʿUmar and ʿUthmān. I did not hear any one of them recite *Bismillāh al-raḥman al-raḥīm*".<sup>89</sup> In another version, "I performed prayer behind Abū Bakr, ʿUmar and ʿUthmān. They were not raising the voice for *Bismillāh al-raḥmān al-raḥīm*".<sup>90</sup>

They reject the *ḥadīth* used by al-Shāfiʿī to support his view because it is a *khābar* reported by a single person on a matter of *ʿumūm al-balwā*.<sup>91</sup>

Mālik in *al-Muwattaʿa* holds that *basmalah* should not be recited aloud nor silently. It means that *basmalah* should not be recited at all in obligatory prayers (*ṣalāh maktūbah*) based on a *ḥadīth* of Anas b. Mālik in which he said, "I stood for prayer behind Abū Bakr and ʿUmar. All of them did not recite *basmalah* when about

<sup>86</sup> *Al-Umm*. vol. I. p. 108.

<sup>87</sup> Abū Ḥanīfah, *Musnad al-Imām Abī Ḥanīfah*, p. 55, *ḥadīth* 99-100. Abū Ḥanīfah - Ḥamād - Anas - "kān al-Nabī wa Abū Bakr wa ʿUmar raḍiya Allāh ʿanhumā lā yajharūn bi bismillāh al-raḥmān al-raḥīm".

<sup>88</sup> Cf. Ibn Rushd, *Bidāyat al-Mujtahid*. vol. I., p. 89.

<sup>89</sup> Related by Aḥmad and Muslim.

<sup>90</sup> Related by Aḥmad and al-Nasaʿī.

<sup>91</sup> Al-Khinī, *Athar al-Ikhtilāf*. p. 428, citing ʿAbd al-ʿAzīz al-Bukhārī, *al-Kashf*. vol. III. p. 18.

to start the prayer".<sup>92</sup> However, he allows *basmalah* to be recited in recommended prayers (*nāfilah*). This is according to him the *sunnah* which he found the people of Madīnah followed.<sup>93</sup>

### 6.8.1.3 Raising Hands During *Rukū'* And After

According to al-Shāfi'ī, Aḥmad b. Ḥanbal, Abū 'Ubayd, Abū Thawr, al-Zāhirī and the majority of *ahl al-ḥadīth*, those who perform prayer should raise their hands during *rukū'* and after the *rukū'*, the way they do during *takbīrat al-iḥrām*.<sup>94</sup>

Their proof for that is a *ḥadīth* of Ibn 'Umar who said that, "when the Prophet stood for the prayer, he would raise his hands until they were at the level with his two shoulders, then he said *Allāh Akbar* (*takbīr*). When he wanted to bow (*rukū'*), he raised his hands in the same manner. And when he raised his head from *rukū'*, he also raised his hands, and he said "*sami'a Allāh liman ḥamidah rabbānā wa laka al-ḥamd*".<sup>95</sup>

Abū Ḥanīfah and his disciples hold the view that there is no such raising of the hands except during *takbīrat al-iḥrām*.<sup>96</sup> They based this on the *ḥadīth* of Ibn Mas'ūd in which he said that, "I will demonstrate to you how the Messenger of Allāh

<sup>92</sup> Mālik, *al-Muwatta'*. Ed. Muḥammad Fu'ād 'Abd al-Bāqī. 1951, Cairo: Maṭba'at al-Sa'ādah, p. 90, *ḥadīth* no. 30 (*bāb al-'amal fī al-qirā'ah*).

<sup>93</sup> Mālik b. Anas, *al-Mudawwanah al-Kubrā (Riwayāt Saḥnūn)*. vol. I. Beirut: Dār Ṣādir, p. 64; Ibn Rushd, *Bidāyat al-Mujtahid*. vol. I. p. 89.

<sup>94</sup> See Ibn Rushd, *Bidāyat al-Mujtahid*. vol. I. p. 96-7.

<sup>95</sup> See this *ḥadīth* in *al-Muwatta'*, p. 86, (*bāb iftitāḥ al-ṣalāh*), no. 16. Yaḥya - Mālik - Ibn Shihāb - Sālim b. 'Abd Allāh - 'Abd Allāh b. 'Umar.

<sup>96</sup> Ibn Rushd, *Bidāyat al-Mujtahid*. vol. I. p. 96.



performed the prayer. Then he performed the prayer without raising his hands but only once".<sup>97</sup>

Mālik holds that one can raise his hands a little bit in the beginning (*iftitāḥ*) of the prayer. There is nothing to do with the raising of hands during bowing (*khafḍ*) and after *rukūʿ*.<sup>98</sup> He bases his judgement on the basis of *ḥadīths* of Ibn ʿUmar<sup>99</sup> and Ibn Masʿūd.<sup>100</sup>

### 3.8.2 The Conflict Between ʿAmal of Rāwī and His al-Ḥadīth

A *rāwī*'s practice contradictory to what he transmitted is also a disputed matter among scholars. This is illustrated when a *rāwī* continues to practise the opposite of what he narrated from a *ḥadīth*. It would not be any problem if the transmitter practised the contrary prior to his transmission of the *ḥadīth*, for there is a possibility that he had reverted from what he had practised after he became aware of the *ḥadīth*.

Those who prefer the *ḥadīth* rather than the *rāwī*'s practice argue that the proof would be only to what the Companion had narrated, not to what he had said or done. The reason for this is that his saying or action might be his interpretation or *ijtihād*, whereas, according to al-Shāfiʿī, the narrator's *ijtihād* does not bind Muslims.

<sup>97</sup> Abū Ḥanīfah, *Musnad al-Imām Abī Ḥanīfah*. pp. 52-4, *ḥadīth* 93-6.

<sup>98</sup> Mālik, *al-Mudawwanah al-Kubrā*. vol. I., pp. 68-9.

<sup>99</sup> The chain of transmitters Mālik - Ibn Shihāb - Sālim - Ibn ʿUmar, "that the Prophet when he starts the *takbīr* of the prayer, he rises his hands up to his shoulders". See Mālik, *al-Mudawwanah al-Kubrā*. vol. I., p. 68.

<sup>100</sup> The chain of transmitters is Wakīʿ - Sufyān - al-Aswad and ʿAlqamah, they said that Ibn Masʿūd said that "I will demonstrate to you how is the Prophet's prayer. Then he did his prayer without raising his hands except once". Mālik, *al-Mudawwanah al-Kubrā*. vol. I., p.69.

He emphasises that he would not abandon the *ḥadīth* because of the practice of such a man, and, in fact if he was the narrator's contemporary, he would argue with the latter.

On the other hand, those who do not accept it argue that if contradiction is a real matter, such as when the *ḥadīth* has been abrogated, the argumentation with it is invalid. From another aspect, however, if the contradictory practice was a result of the narrator's lack of concentration in the *ḥadīth*, or his forgetfulness, his transmission would not be accepted, and he is no longer considered trustworthy. Therefore, his transmission would not be accepted.

#### 6.8.2.1 Marriage Contract Without A Guardian (*Walī*)

As far as a free, virgin and mature women who married herself without a consent of her guardian is concerned, *fuqahā'* disagree about its validity.

The majority of *fuqahā'* hold that a marriage without a guardian is invalid because of a *ḥadīth* related by °Ā'ishah in which the Prophet had said, "whenever a woman gets married without the consent of her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid..."<sup>101</sup>

Most Ḥanafites hold the view that the contract of marriage of a widow (*thayyib*) without a guardian is valid based on a *ḥadīth* that, "a widow is more entitled of her self than her guardian".<sup>102</sup> They reject the *ḥadīth* related by °Ā'ishah because °Ā'ishah as the transmitter, had practised the contrary of it. In fact, she had married

<sup>101</sup> See Abū Dāwūd, (*nikāḥ*) 19; al-Tirmidhī, (*nikāḥ*) 14; al-Dārimī, (*nikāḥ*) 11.

<sup>102</sup> See Abū Dāwūd, (*nikāḥ*) 25; al-Tirmidhī, (*nikāḥ*) 11, Ibn Mājah, (*nikāḥ*) 13; al-Muwatta', (*nikāḥ*) 4.

off her niece (*bint akhīhā*), Hafṣah bint ʿAbd al-Raḥmān to al-Mundhir b. al-Zubayr without the consent of her guardian for the guardian was absent.

### 6.8.2.2 Washing Containers in Which Dogs Have Licked

How many times should a container be washed to purify (*tahārah*) it after it has been licked by a dog? The majority of *fuqahā'* including al-Shāfiʿī and Aḥmad b. Ḥanbal hold the view that it should be washed seven times in which one of them should be of sand. Their argument about the number of washings is based on the *ḥadīth* of Abū Hurayrah who related that the Prophet said, "when a dog licks one of your containers, he should pour it out, and then wash it seven times".<sup>103</sup>

In this respect, the Ḥanafites<sup>104</sup> require it to be washed only three times instead of seven for they view the *ḥadīth* of Abū Hurayrah as having no weight since in their eyes the *rāwī*, Abū Hurayrah himself practised the contrary. It is reported that Abū Hurayrah washed it just three times.<sup>105</sup>

According to Mālik, this act of washing the container is unjustifiable (*ghayr muʿallalah*), for he believes that the water the dog has licked is not *najis*.<sup>106</sup> Thus, according to him, one can use it for *wuḍū'* and his prayer will be valid. As far as this

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<sup>103</sup> Ibn Rushd, *Bidāyat al-Mujtahid*. vol. I. p. 20.

<sup>104</sup> Ibn Rushd, *Bidāyat al-Mujtahid*. vol. I., p. 22.

<sup>105</sup> Ibn Rushd, *Bidāyat al-Mujtahid*. vol. I. p. 30.

<sup>106</sup> Ibn Rushd, *Bidāyat al-Mujtahid*. vol. I., p. 22.

is concerned, Mālik acknowledges the existence of that *ḥadīth*, but he does not know what is the real meaning of it.<sup>107</sup>

### 3.8.3 *Khabar al-Wāḥid* v *Qiyās*

There arise questions as to whether *khabar al-wāḥid* takes precedence over *qiyās* or the other way round in the case when *khabar al-wāḥid* contradicts *qiyās*?

Al-Shāfiʿī, Aḥmad b. Ḥanbal and the majority of *ahl al-ḥadīth* give preponderance (*tarjīḥ*) to *khabar* over *qiyās* whether a transmitter is knowledgeable (*faqīh*) or not on condition that he must be reliable and trustworthy. The argument adduced to favour them is what the Prophet said to Muʿādh when he sent him to Yemen, "*bima taqḍī, qāl bi kitāb Allāh, qāl fa 'in lam tajid, qāl bi sunnat Rasūl Allāh, qāl fa 'in lam tajid, qāl ajtahid bi ra'yī wa lā ālū*". It is clear from the above *ḥadīth* that the position of *ʿamal* with *qiyās* is later than the *sunnah* of the Prophet, without distinguishing between a *mutawātir* or *āḥād*, and that the Prophet has confirmed the hierarchical order of the sources of law.

They also put forward the *ijmāʿ* of the Companions that they will abandon their *ijtihād* based on *qiyās* the moment they heard *khabar al-wāḥid* with regard to a certain matter, for instance, such as Abū Bakr, ʿUmar and Ibn ʿUmar who abandoned their *ijtihād* when a *khabar* from the Prophet became available to them.

They also argue that the source of *khabar* can be relied on because it is a saying of the Prophet in which there is no possibility of a mistake occurring. However,

<sup>107</sup> Mālik b. Anas, *al-Mudawwanah al-Kubrā*. vol. I., pp. 5-6.

there is a *shubhah* (ambiguity) in terms of transmission (*naql*). If this ambiguity did not exist, then *khavar* would be a decisive proof.

The Hanafites hold that it is not an obligation to apply *khavar al-wahīd* in law if it contradicts *qiyās* and its transmitter is not *faqīh*. According to them if it is a transmission of those who are not knowledgeable on *fiqh*, but they are well-known as just (*‘adālah*) and *ḍabṭ* such as Abū Hurayrah, Anas b. Mālik, and their transmissions agree with *qiyas*, their transmission will be acted upon. And if it opposes *qiyas*, it will be abandoned in the case of emergency (*ḍarūrah*).

#### 6.8.3.1 *Muṣarrāh*

*Fuqahā'* disagree regarding the value of *muṣarrāh*, and whether if a buyer can detect certain defects, he has the right to return the goods (*khiyār*)? If we say that he has the right to do so, what thing should he give to the seller instead of the milk he has taken?<sup>108</sup>

The majority of *fuqahā'* hold the view that a buyer has the right to choose whether to continue or to terminate the contract, and he also has to pay one *ṣā'* of dates instead of the milk. They adduce a proof of a *ḥadīth* related from Abū Hurayrah wherein the Prophet said: "Don't make a *taṣrīyah* on camels and sheep, so, he who bought it has two choices (*khayr al-naẓarayn*) after he has squeezed it; if he is

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<sup>108</sup> Cf. Al-Qurṭubī, *Kitāb al-Kāfī*. vol. II., pp. 707-8.

satisfied he may take it, and if he dislikes it, he shall return it together with one *ṣā'* of dates".<sup>109</sup>

The Ḥanafites hold a different view. To them the buyer has no right to return it because of the defect of the practice of *taṣṛiyah*, and it follows, therefore, that he is also not required to pay one *ṣā'* of dates. They reject a *ḥadīth* of Abū Hurayrah, arguing that it is a *ḵabar al-wāḥid* related by him. According to them Abū Hurayrah is unlike Ibn Mas'ūd and other Companions who are known as *fuqahā'*. Therefore they do not take into consideration as to what is related from him which contradicts *qiyās*.

#### 6.8.3.2 *Khiyār al-Majlis*

Al-Shāfi'ī, Aḥmad b. Ḥanbal and the *fuqahā'* of *ahl al-ḥadīth* hold that two parties to a contract have a right of *khiyār* during the contractual session for as long as they have not dispersed. If they have dispersed, the contract will be binding on condition that there is no *khiyār al-sharṭ*. This view is derived from the *ḥadīth* related by Ibn 'Umar that the Prophet said: "If two men make a contract of sale, one of them has a right of *khiyār* as long as they have not dispersed; they are together [in contract session], and one of them give an option to the other; if they conclude the contract of sale on that condition, the contract of purchase is binding".<sup>110</sup>

<sup>109</sup> See al-Bukhārī, (*buyū'*) 64; Muslim, (*buyū'*) 1; Abū Dāwūd, (*buyū'*) 47; Nasā'ī, (*buyū'*) 14; Muwatta', (*buyū'*) 96.

<sup>110</sup> See al-Bukhārī, (*buyū'*) 19, 22, 42, 44, 46-7; Muslim, (*buyū'*) 43, 46-7; Abū Dāwūd, (*buyū'*) 51; al-Tirmidhī, (*buyū'*) 26; Nasā'ī, (*buyū'*) 4, 8-10, 82; Ibn Mājah, (*tijārāt*) 17; Dārimī, (*buyū'*) 15; Muwatta', (*buyū'*) 89.

Mālik, Abū Ḥanīfah and his disciples hold the view that there is no such *khiyār* during the contractual session. If an offer and acceptance happens, then the sale is binding. They do not take this *hadīth* into account because it is a *khavar al-wāḥid* which contradicts *qiyās*.

#### 6.8.4 The Restriction (*Takhṣīṣ*) of a General Meaning in the Qur'ān by *Khavar al-Wāḥid*

The question is whether or not it is possible that the generality (*ʿumūm*) of the Qur'ān can be specialized (*takhṣīṣ*) by a *khavar* transmitted by single transmitters?

Al-Juwaynī<sup>111</sup> in *al-Burhān* cites three different views, while al-Ghazālī, in his *al-Mustaṣfā* records four. In the first view,<sup>112</sup> they believe that the generality of the Qur'ān cannot be specified by a *khavar* related by a single authority on the basis that the former is indisputed (*qaṭʿī al-thubūt*) in its source, while the nature of the latter is such that it is possible for any mistake to have happened (*ẓannī al-thubūt*). Therefore, by producing this simple analogy, they make a decision that the established and indisputable source, i.e. the Qur'ān, cannot in any way be specified by another source whose nature is arguable, i.e. *khavar al-wāḥid*. To conclude, according to them the generality of the Qur'ān is superior to *khavar al-wāḥid* which seems to play a

<sup>111</sup> Al-Juwaynī, *al-Burhān fī Uṣūl al-Fiqh*. Ed. ʿAbd al-ʿAzīm al-Dīb. 1399H. Qaṭar: Maṭābiʿ al-Dūḥat al-Ḥadīthiyyah, vol. I. p. 326.

<sup>112</sup> Among them are the Ḥanafites. see Muḥammad Abū Zāhrah, *al-Shāfiʿī*. p. 202.

*takhsīṣ* role. To counter-argue, al-Ghazālī produces four arguments to refute this view.<sup>113</sup>

The second view is that of the *fuqahā'* who maintain the doctrine that *khavar al-wāḥid* may specify the general terms in the Qur'ān. Al-Juwaynī,<sup>114</sup> as well as al-Ghazālī<sup>115</sup> do not mention the name of any person holding the above view. However, al-Juwaynī prefers (*tarjīḥ*) this view arguing that the 'amal which is required is based on an outward possibility (*ẓahir muḥtamil*). The reason is that, it is definitely certain that by referring to the Companions' *sīrah*, their 'amal was based on conjecture i.e. *khavar al-wāḥid* transmitted by a reliable person in interpreting (*tafsīr*) the ambiguities (*mujmal*) of the Qur'ān.

Al-Ghazālī puts forward pieces of evidence that the Companions held this view when Abū Hurayrah narrated a *ḥadīth* that a man cannot be married to a woman and her aunt at the same time, nor does it matter whether the aunt is on her father's side ('*ammah*) or on her mother's side (*khālah*). So, in their eyes, the *ḥadīth* of Abū Hurayrah is considered as specifying the verse *al-Nisā'*:24, "it is allowed to you what is beyond that". It also happened to verses of inheritance where the *ḥadīth* of Abū Hurayrah which specifies that it would not be possible for murderer, slave and those who are of different religion (*ahl al-millatayn*) to inherit. After giving instances which support this group, he criticises the above arguments that they had abandoned the generality of the Qur'ān just merely on the grounds of the saying of transmitter.

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<sup>113</sup> See *Al-Mustasfā*. p. 238.

<sup>114</sup> *Al-Burhān*. vol. I. p. 426-7.

<sup>115</sup> *Al-Mustasfā*. p. 249.



However, according to him, it might be that in their eyes the transmitter's report is correct based on circumstantial evidence (*qarīnah*) and proofs other than merely his own saying.<sup>116</sup>

Al-Qaḍī Abū Bakr al-Bāqillānī holds that there should be a suspension of judgement (*waqf*)<sup>117</sup> if a *khavar* contradicts the expression of the Qur'ān. The reason given is that while the source of *khavar* has some sort of conjecture (*ẓann*), the meaning of the generality of the Qur'an too is open to conjecture. Therefore, the meaning of the Qur'ān is similar to the source of *khavar* in terms of contradiction. According to him, the suspension of judgement would only take place in the disputed position and the rest of the general expression of the Qur'ān should proceed.<sup>118</sup>

According to al-Shāfi'ī in his *al-Risālah*, *takhṣīṣ* of the generality of the Qur'ān by *khavar al-wāḥid* is possible in any case. He lists about seven cases in which the generality of the Qur'ān is specified by *khavar*. For instance, the Qur'ān, *al-Nisā'*: 11-12, states the share of every one of *aṣḥāb al-furūd* (individuals whose share of inheritance has been prescribed). According to him,<sup>119</sup> these two verses are general, and then were specified by the *khavar* that the murderer of the deceased and those of different religions are excluded from inheritance.

The same also happens in the case of flogging (*jald*). According to the Qur'ān, *al-Nūr*: 25, those who commit adultery (*zinā*) would be flogged a hundred lashes

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<sup>116</sup> *Al-Mustafā*, p. 249.

<sup>117</sup> Al-Juwaynī, *al-Burhān*, vol. I. p. 428; al-Ghazālī, *al-Mustafā*, p. 249.

<sup>118</sup> Al-Juwaynī, vol. I. p. 327.

<sup>119</sup> *Al-Risālah*, para. 216

regardless of whether they are unmarried (*bikr*) or not (*muḥṣan*). As far as married persons are concerned, the Prophet, instead of flogging, stoned a married person who committed adultery. This shows that the penalty of a hundred lashes is particularly prescribed to unmarried persons.<sup>120</sup>

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<sup>120</sup> *Al-Risālah*. paras. 225-7; see also Abū Zahrah, *al-Shāfiʿī*. p. 202.

## CHAPTER SEVEN: AL-SHĀFI'Ī AND MURSAL ḤADĪTHS

### 7.1 Definition of Mursal

Broadly speaking, *ḥadīth* in terms of its *isnād* (chain of transmitters) can be divided into two categories: uninterrupted (*muttaṣil*) and interrupted (*munqatiʿ*). An uninterrupted *ḥadīth* is a *ḥadīth* whose *isnād* is continuous from later authorities up to the ultimate source, the Prophet. The transmitters are from among the *tābiʿīn*- the *ṣaḥābah*- the Prophet.

On the other hand, an interrupted *ḥadīth*<sup>1</sup> is a *ḥadīth* whose *isnād* has been interrupted, such that a later authority relates directly from the Prophet without quoting any intermediate authorities.

*Mursal* is in fact a kind of *munqatiʿ ḥadīth*.<sup>2</sup> It is defined as a *ḥadīth* in which one or more of narrators were omitted between them up to the Prophet.<sup>3</sup> In other words, *mursal* in the technical terminology denotes a *ḥadīth* related by a *tābiʿ* directly from the Prophet in which the Companions, who are the authorities immediately prior

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<sup>1</sup> Muḥammad ʿĀjjāj al-Khaṭīb in his *Uṣūl al-Ḥadīth- ʿUlūmuh wa Muṣṣalaḥuh* categorises *ḥadīth* into two categories. First, an interrupted *sanad*, and second an uninterrupted *sanad*. The first kind is the *mursal*, *munqatiʿ*, *muʿaḍḍal*, and *mudallas*. Whereas the second kind is the *muḍaʿaf*, *muḍṭarib*, *maqlūb*, *shādhdh*, *munkar*, *matrūk* and *maṭrūḥ*. [See Muḥammad ʿĀjjāj al-Khaṭīb, *Uṣūl al-Ḥadīth*. 3rd. ed. Dimashq: Dār al-Fikr, 1975. pp. 337-348.

<sup>2</sup> Most *fuqahāʾ*, *uṣūlī* scholars and a group of *ahl al-ḥadīth* as well as al-Khaṭīb al-Baghdādī define *mursal ḥadīth* as *ḥadīth* whose *isnād* is interrupted (*munqatiʿ*) in whatever stages of discontinuity. See al-Nawawī, *Ṣaḥīḥ Muslim bi Sharḥ al-Nawawī*. vol I., 1987. Beirut: Dār al-Kitāb al-ʿArabī, p. 30.

<sup>3</sup> Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*. vol. II. p. 2.

to the Prophet are omitted, such as a *tābi*<sup>4</sup>, regardless of his seniority<sup>4</sup> attributed directly to the Prophet the latter sayings, deeds or tacit approval (*taqrīr*).<sup>5</sup>

The omission of the Companion in the *isnād* has a great effect in *ḥadīth* criticism or *‘ilm al-jarḥ wa al-ta‘dīl*. The fundamental principle by which such a *ḥadīth* would be accepted in the eyes of *ahl al-ḥadīth*, is for the transmitter (*rāwī*) in the first place, to be *‘adl*. In other words, if a transmitter of such a *ḥadīth* is known, those who are interested in this discipline could make a judgement as to whether he is *‘adl* or not. On the contrary, a *mursal ḥadīth* lacks one of its intermediate narrators and the missing personality could be unknown (*majhūl*). Therefore, this *ḥadīth* will be suspended before it being either accepted or rejected.<sup>6</sup>

There are a number of reasons why such a *rāwī* is omitted from the authorities from whom the *ḥadīth* is related. It may be that if the *rāwī* is mentioned, he will not be accepted, or that a later *rāwī* may not like to narrate the *ḥadīth* from the earlier *rāwī*.<sup>7</sup>

<sup>4</sup> Al-Khatīb, *Uṣūl al-Ḥadīth*. p. 337.

<sup>5</sup> This definition of *mursal* is attributed to Muḥaddithīn. Muḥammad al-Khuḍarī, *Uṣūl al-Fiqh*. 1988 (reprint), Beirut: Dār al-Fikr, p. 229; al-Nawawī, *Ṣaḥīḥ Muslim bi Sharḥ al-Nawawī*. vol. I., p. 30.

<sup>6</sup> Ibn Ḥazm, *al-Iḥkām*. vol. II, p. 2.

<sup>7</sup> Al-Shāfi‘ī, *al-Risālah*. p. 464, para. 1276. See also Muḥammad al-Khuḍarī Bek, *Uṣūl al-Fiqh*. pp. 229-232; ‘Abd al-‘Azīz ‘Izz al-Dīn al-Sayrawān, *His Introduction to al-Marāsīl ma’a al-Asānīd li Abī Dāwūd*. 1987. Beirut: Dār al-Qalam, pp. 42-3 citing Shukr Allāh Qawjānī, *His Introduction to Marāsīl Ibn Abī Ḥātim*. pp. 17-18.

## 7.2 Are *Mursal Ḥadīths* A Decisive Argument?

The above statement is crucial for discussions among scholars that will finally determine whether or not it has an effect on Muslim law. The question is, whether or not *mursal ḥadīth* is a decisive argument since some scholars accept it, while others do not.

As a focus of study, al-Shāfi'ī neither accepts nor rejects it totally.<sup>8</sup> There are, according to him, reservations to be observed prior to the acceptance of such a *mursal ḥadīth*. To him, only *marāsīl* (sing. *mursal*) of *kibār al-Tābi'īn* (older successors) will be accepted. The reason why he distinguishes between *kibār al-tābi'īn* and the others is the former's less possibility of *iḥālah* (changing the meaning).<sup>9</sup> He claims that none of the *mursal* other than those of the *kibār al-tābi'īn* has been accepted for a number of reasons.<sup>10</sup>

Shākir, a contemporary scholar disagrees with al-Shāfi'ī regarding the acceptance of *mursal*, whether or not it is of *kibār al-tābi'īn*. This disagreement is basically due to the presence of unknown authority in the *isnād*. He justifies this by saying that the authority in *mursal* is an unknown (*majhūl*) whether he is *ʿadl* or not, whereas the principle in *ʿilm al-ḥadīth*, is that such a *ḥadīth* will only be a proof when the *ʿadālah* of the transmitter is known. Otherwise, the *ḥadīth* will be rejected. To him, this principle is applicable to all kinds of *munqatīʿ*.<sup>11</sup>

<sup>8</sup> Abū Zahrah, *al-Shāfi'ī Ḥayātuh wa ʿAṣruh-Ārāʾuh wa Fiqhuh*. p. 227

<sup>9</sup> *Al-Risālah*. para. 1286.

<sup>10</sup> *Al-Risālah*. para. 1277.

<sup>11</sup> Aḥmad Muḥammad Shākir in *al-Risālah* by al-Shāfi'ī, p. 465.

In his *al-Ihkām fī Uṣūl al-Aḥkām*, Ibn Ḥazm strongly rejects *mursal ḥadīths* and vehemently attacks those who accept them.<sup>12</sup>

As far as scholars' views about the acceptability of *mursal* are concerned, their views can be divided into three categories.<sup>13</sup>

- i. *Mursal* is a very weak *ḥadīth* (*ḍaʿīf mutlaqan*) and it does not constitute a proof. This view is held by the majority of *ahl al-ḥadīth*, jurists as well as al-Khaṭīb al-Baghdādī,<sup>14</sup> al-Nawawī, Ibn Ḥazm<sup>15</sup> and others.
- ii. It is acceptable and carries weight (*ḥujjah*) in jurisprudence for as long as the *mursil* (the *rāwī* who practises *irsāl*) is reliable and trustworthy. This view is attributed to Mālik, Abū Ḥanīfah<sup>16</sup> Aḥmad b. Ḥanbal, Ibn al-Qayyim, Ibn Kathīr<sup>17</sup> and others.<sup>18</sup>

<sup>12</sup> Ibn Ḥazm, *al-Ihkām*. vol. II, pp. 2-6.

<sup>13</sup> Al-Khaṭīb al-Baghdādī, *al-Kifāyah fī ʿIlm al-Riwāyah*. pp. 384ff; al-Turkī, ʿAbd Allāh b. ʿAbd al-Muḥsin, *Asbāb Ikhtilāf al-Fuqahāʾ*. 2nd. ed., 1977. Riyāḍ: Maktabat al-Riyāḍ al-Ḥadīthiyyah, pp. 100-1; Ibn Ḥazm, *al-Ihkām fī Uṣūl al-Aḥkām*. vol. II, pp. 2-6; al-Tahānawī, *Dictionary of the Technical Terms Used in the Sciences of the Muslims*. vol. I, 1862, Calcutta, p. 586; al-Āmidī, *al-Ihkām fī Uṣūl al-Aḥkām*. vol. II, pp. 349-355; Kamali, Mohammd Hashim, *Principles of Islamic Jurisprudence*. 1989, Selangor: Pelanduk Publications, pp. 100-2.

Muḥammad ʿAjjāj al-Khaṭīb in *Uṣūl al-Ḥadīth* mentions that there are about ten points of views among scholars concerning *mursal ḥadīth*. However, he states that the popular views are only three. See *Uṣūl al-Ḥadīth-ʿUlūmuh wā Muṣṭalaḥuh*. p. 338.

<sup>14</sup> Al-Khaṭīb al-Baghdādī, *al-Kifāyah*. p. 387.

<sup>15</sup> *Al-Ihkām*. vol. II. pp. 2-6; al-Nawawī, *Ṣaḥīḥ Muslim bi Sharḥ al-Nawawī*. vol. I., p. 30; al-Sayrawān, *His Introduction to al-Marāsīl*. pp. 26-7.

<sup>16</sup> Al-Khuḍarī, *Uṣūl al-Fiqh*. p. 229.

<sup>17</sup> Al-Āmidī, *al-Ihkām*. vol. II. 349; al-Zuhaylī, Wahbah, *Uṣūl al-Fiqh al-Islāmī*. vol. I. 1986. Dimashq: Dār al-Fikr, p. 474 citing *Irshād al-Fuḥūl*. p. 57.

<sup>18</sup> Al-Khaṭīb al-Baghdādī, *al-Kifāyah*. p. 384; al-Nawawī, *Ṣaḥīḥ Muslim bi Sharḥ al-Nawawī*. vol. I., p. 30; al-Sayrawān, *His Introduction to al-Marāsīl li Abī Dāwūd*. pp. 26-32.

iii. The majority of scholars hold that *mursal ḥadīths* are considered as a decisive proof on certain conditions. They are for instance al-Shāfiʿī, al-Bayhaqī, al-Baghdādī and others.<sup>19</sup>

### 7.3 Al-Shāfiʿī's Attitude Towards *Mursal*

Al-Shāfiʿī is reported to have cited a *mursal ḥadīth*, which he claims none of the scholars has accepted. But he qualifies that this *ḥadīth* is not confirmed as definitely coming from the Prophet. The *ḥadīth* is as follows;

"Sufyān informed us, from Muḥammad b. al-Munkadir, that a man came to the Prophet and said: O Apostle of God, I have property (*māl*) and family and also my father. However, he wants to take my property to feed his family. Then the Apostle of God said: you and your property belong to your father".<sup>20</sup>

Even though al-Shāfiʿī's judgement on Muḥammad b. al-Munkadir as appears in this *isnād* is that he is a very reliable person, he is reluctant to accept the latter *ḥadīth* because the narrator from whom al-Munkadir related is unknown to him.<sup>21</sup>

Al-Shāfiʿī highlights another *ḥadīth* in order to show that it is rejected because of it being *mursal*.<sup>22</sup> "A trustworthy person (*thiqah*)<sup>23</sup> informed us, from Ibn Abī Dhi'b from Ibn Shihāb that the Apostle of God commanded a man who laughed during the

<sup>19</sup> Al-Sayrawān, *His Introduction to al-Marāsīl li Abī Dāwūd*. pp. 32ff.

<sup>20</sup> *Al-Risālah*. paras. 1290-1299.

<sup>21</sup> *Al-Risālah*. para. 1290-1297.

<sup>22</sup> In *Manāqib al-Shāfiʿī*, there is a statement which clearly indicates al-Shāfiʿī's strong objection to the acceptance of *munqatīʿ ḥadīth* (*mursal*). In other words, *munqatīʿ ḥadīth* would not be a proof (*hujjah*). See al-Bayhaqī, *Manāqib al-Shāfiʿī*. vol. I. p. 493.

<sup>23</sup> Shākir citing al-Zaylaʿī, *Nasab al-Rāyah*. vol. I, p. 52, that the *thiqah* (reliable person) in this *isnād* is Yahyā b. Hisān. See *al-Risālah*. p. 469, note no. 2.

prayer to repeat his *wuḍū'* and *ṣalāh*".<sup>24</sup> It is obvious that Ibn Shihāb did not relate the above *ḥadīth* directly from the Prophet, because he was a *tābi'*.

Al-Shāfi'ī's view on the *mursal ḥadīth* can be described as moderate one.<sup>25</sup> He neither accepts nor rejects it. There are some reservations before such a *mursal ḥadīth* is recognised.<sup>26</sup> Principally al-Shāfi'ī does not accept *mursal* as a proof in jurisprudence. He shows this in his *al-Risālah*. It is understandable that in most of his works, he emphasises the paramount importance of the continuity of *isnād* and the reliability and trustworthiness of *ḥadīth* transmitters as shown in the case of the *mursal* above wherein the integrity of the transmitters is not known. However, there is room for *mursal* to be accepted by al-Shāfi'ī if certain conditions are fulfilled.

In this respect, al-Shāfi'ī divides *munqaṭi' ḥadīth* or *mursal* into two categories.<sup>27</sup> First, *mursal* of senior *tābi'īn* whose narration is mostly originated from the Companions and second, *mursal* of junior *tābi'īn*<sup>28</sup> whose narration is mostly taken from the *tābi'īn*.

<sup>24</sup> *Al-Risālah*, paras. 1299-1300.

<sup>25</sup> Al-Zuhaylī, Wahbah, *Uṣūl al-Fiqh al-Islāmī*, vol. I, p. 475.

<sup>26</sup> It is surprising that such a scholar as al-Khaṭīb al-Baghdādī in his *al-Kifāyah* mentions that al-Shāfi'ī is one of those who reject *mursal* without substantiating the former's position. Such a statement is confusing. If al-Baghdādī had referred to *al-Risālah*, he would not have made such statement. See al-Khaṭīb al-Baghdādī, *al-Kifāyah*, p. 48. The same also happens to Muḥammad 'Ajjāj al-Khaṭīb in his *Uṣūl al-Hadīth-ʿUlūmuh wā Muṣṭalaḥuh*, p.338.

<sup>27</sup> There is another *mursal*, *Mursal al-Ṣaḥābah*. There is no polemic about it, because it is generally accepted that all the Companions are *ʿadl*.

<sup>28</sup> Al-Shāfi'ī does accept *marāsīl* of junior *tābi'īn*. For details of the reasons see *al-Risālah*, p. 367.



#### 7.4 Mursal of Senior *tābi<sup>ʿ</sup>īn*

In *al-Risālah*, al-Shāfi<sup>ʿ</sup>ī lays down a few conditions before *mursal* of senior *tābi<sup>ʿ</sup>īn* is taken into consideration. They are:

- i. the *mursal* is supported by a more reliable *ḥadīth* with a continuous *isnād*.<sup>29</sup>
- ii. another *mursal* is related by another *rāwī* on the authorities of other than the former *mursal's shuyūkh*.<sup>30</sup>
- iii. it is supported by the opinion of the Companions (*qawl al-Ṣaḥābī*);<sup>31</sup>
- iv. the *mursal* has been approved by the *ʿulamā'* and a number of them are known to have relied upon it;<sup>32</sup>
- v. it is known of the *rāwī* who practises *irsāl* that he would not relate it from those who have a weakness or other.<sup>33</sup>

According to al-Shāfi<sup>ʿ</sup>ī, if one of the above conditions corroborates the *mursal ḥadīth*, it will be accepted and become an argument. On the other hand, if none of the above-mentioned conditions exists, the *mursal* would have no value in the eyes of al-Shāfi<sup>ʿ</sup>ī. The conditions which he laid down have a significance. A hierarchical order indicates the level of the *mursal's* authenticity. For example a *mursal* supported by other *muttaṣil ḥadīth* is better than other *mursals*.<sup>34</sup>

<sup>29</sup> *Al-Risālah*. p. 462; see also al-Khuḍarī Bek, *Uṣūl al-Fiqh*. p. 230-1.

<sup>30</sup> *Al-Risālah*. p. 462.

<sup>31</sup> *Al-Risālah*. p. 462.

<sup>32</sup> *Al-Risālah*. p. 463.

<sup>33</sup> *Al-Risālah*. p. 463.

<sup>34</sup> *Al-Risālah*. pp. 462-3.

As far as the first condition is concerned, scholars criticize the way al-Shāfi'ī puts it. According to them, what will constitute an argument is the *ḥadīth* with continuous *isnād* that supports the *mursal*. Therefore, it is meaningless for al-Shāfi'ī to put that condition.<sup>35</sup>

It is also relevant to mention here regarding the *ḥadīth* of *al-yamīn ma' al-shāhid* as cited by al-Shāfi'ī in *al-Umm*.<sup>36</sup> After producing the *ḥadīth* with its full *isnād*, some of his contemporaries attack him claiming that his argument is a *mursal ḥadīth*. In counter-attack, al-Shāfi'ī argues that if the *ḥadīth* of *al-yamīn ma' al-shāhid* is considered as a *mursal ḥadīth*, there is yet another *ḥadīth* with continuous *isnād* which supports the former.<sup>37</sup>

According to al-Hajawī,<sup>38</sup> al-Shāfi'ī is considered the first jurist who refutes or attacks the acceptance of *mursal ḥadīth* as an argument. This is opposed to Mālik b. Anas, al-Thawrī and their contemporaries who used it as arguments. Al-Hajawī bases his allegation on reference to the epistle of Abū Dāwūd to the people of Makkah.<sup>39</sup>

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<sup>35</sup> Kamali Mohammad Hashim, *Principles of Islamic Jurisprudence*, pp. 100-1.

<sup>36</sup> Al-Shāfi'ī, *al-Umm*, vol. VII, pp. 7-8.

<sup>37</sup> Al-Shāfi'ī, *al-Umm*, vol. VII, p. 7.

<sup>38</sup> Al-Hajawī, *al-Fikr al-Sāmī fī Ta'rīkh al-Fiqh al-Islāmī*, vol. I, p. 399.

<sup>39</sup> Al-Hajawī, *al-Fikr al-Sāmī*, p. 399.

### 7.5 Scholars' Views About al-Shāfi'ī's Attitude Towards Mursal<sup>40</sup>

Having elaborated what al-Shāfi'ī has mentioned about *mursal ḥadīth*, one might question oneself regarding al-Shāfi'ī's viewpoint on *mursal*. Does it constitute an argument or does al-Shāfi'ī accept *mursal* in determining rulings in Islamic jurisprudence?

There is no consensus among scholars regarding the above matter. Their views on the subject can be divided into three categories;

- i. They believe that al-Shāfi'ī does not accept *mursal* and does not consider it as an argument, regardless of whether they are *marāsīl* of *kibār al-tābi'īn* or of *ṣighār al-tābi'īn*.<sup>41</sup>
- ii. Some<sup>42</sup> postulate that he would accept only the *marāsīl* of Ibn al-Musayyib. This is inferred from his statement, "a *mursal* of Sa'īd b. al-Musayyib is a sound one (*ḥasan*) in our view".<sup>43</sup>

<sup>40</sup> Aḥmad Naḥrāwī 'Abd al-Salām, *al-Imām al-Shāfi'ī fī Madhhabayh al-Qadīm wa al-Jadīd*. 1988. n.p. pp. 365-370.

<sup>41</sup> Al-Ghazālī, *al-Mustaṣfā*. p. 134 cites the views of Abū Ḥanīfah, Mālik and the majority of those who accept *mursal*, whereas it is refuted by al-Shāfi'ī. Naḥrawī holds that al-Shāfi'ī does not accept *mursal* or put it into *amal*, and does not consider it as an argument. He derives this from the word "we prefer" (*aḥbabnā*). see Naḥrāwī, *al-Imām al-Shāfi'ī*, pp. 368-369; al-Nawawī, *Ṣaḥīḥ Muslim bi Sharḥ al-Nawawī*. vol. I., p. 30.

<sup>42</sup> Naḥrāwī, p. 366; Muḥammad al-Khuḍarī Bek, *Uṣūl al-Fiqh*. p. 229.

<sup>43</sup> Ibn Abī Ḥātim al-Rāzī, *Ādāb al-Shāfi'ī*, p. 232; al-Shāfi'ī, *Mukhtaṣar al-Muzanī*. (*bab al-ribā*). Al-Shāfi'ī in another place mentions that "*mursal* of Ibn al-Musayyab in our views is a decisive proof (*ḥujjah*)", al-Sayrawān, *His Introduction to al-Marāsīl li Abī Dāwūd*. p. 34 citing *al-Shāfi'ī*.

iii. They believe that al-Shāfi'ī would not put *mursal* into effect (*'amal*) unless it is narrated by reliable transmitters like Ibn al-Musayyib<sup>44</sup> for *ḥadīths* of Ibn al-Musayyib are considered as *musannad ḥadīth*, or unless there is a supporting *ḥadīth*. In this case, the combination of *mursal* and supporting *ḥadīth* will constitute an argument.<sup>45</sup>

The different views about al-Shāfi'ī's perception on *mursal* resulted from words or terms whose expressions are vague and interpretable, such as that of, "we prefer to accept his *mursal*".<sup>46</sup>

In my opinion, al-Shāfi'ī does accept or put *mursal* into effect (*'amal*). Firstly, it is meaningless for him not to accept it because he has laid down pre-conditions for its acceptance. Though it is within our knowledge that he basically rejects *mursal*, the fact that he has laid down the conditions suggests that he also accepts it.

Secondly, the phrase "we prefer to accept his *mursal*" shows a tendency to accept rather than to reject them.

Thirdly, a cross-reference to his writings shows that there are several instances where he applies *mursal* as an argument or uses it as a supporting argument.<sup>47</sup>

Fourthly, al-Shāfi'ī himself admits that he several times produces specimens of the interrupted *ḥadīth* (*munqati'*). This, however, does not necessarily mean that he relates *munqati' ḥadīths* for he claims that he had heard all those *ḥadīths* in the

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<sup>44</sup> Al-Shāfi'ī accepts the *marāsīl* of Ibn al-Musayyib, because he deduces the latter's *'ādah* is that he only relates from a trustworthy person. See Ibn Abī Hātim al-Rāzī, *Ādāb al-Shāfi'ī wa Manāqibuh*, p. 232-3.

<sup>45</sup> Naḥrawī, *al-Imām al-Shāfi'ī*, p. 366 citing al-Qasṭallānī, *Irshād al-Shārj*, vol. I, p. 37 and al-Subkī, *Tāj al-Dīn, Matn Jam' al-Jawāmi'-Sharḥ al-Jalāl al-Muḥallā lī al-Bamānī*, vol. II, p. 117.

<sup>46</sup> *Al-Risālah*, p. 464, "wa idhā wujidat al-dalā'il bi ṣiḥḥat ḥadīthih bimā waṣaḥu aḥbabnā 'an naqbal mursalah".

<sup>47</sup> *Al-Risālah*, paras. 1107, 295, 296.

form of *muttaṣil* or *mashhūr*.<sup>48</sup> He justifies this by clarifying that he tries to avoid writing down *ḥadīth* which he is not well versed in. It is also due to the loss of some of his books.

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<sup>48</sup> *Al-Risālah*. p, 431.

## CHAPTER EIGHT: THE SCIENCE OF *IKHTILĀF AL-ḤADĪTH*<sup>1</sup>

### 8.1 Definition

*Ikhtilāf al-ḥadīth* is a science in which the so-called contradictory *ḥadīths* are reconciled (*tawfīq*) or gathered together (*jamʿ*). This reconciliation and harmonization could be done by means of specifying the general (*takhṣiṣ al-ʿāmm*) or *taqyīd al-mutlaq* or by considering the differences of events.<sup>2</sup> It also explains (*bayān*) and interprets (*taʿwīl*) the ambiguities surrounding the Prophetic traditions whilst not contradicting other *ḥadīth*.<sup>3</sup>

*Kitāb Ikhtilāf al-Ḥadīth* of al-Shāfiʿī is considered the oldest manual dealing with the subject.<sup>4</sup> However, it does not encompass all apparent contradictory *ḥadīths*. He only mentions some *ḥadīths* and tries to elucidate ways to reconcile them as a guideline for those who came after him.

Through his *Ikhtilāf al-Ḥadīth*, al-Shāfiʿī demonstrates his expertise on the science of *ḥadīth*. He is considered as the pioneer<sup>5</sup> who explored in detail the status of apparently contradictory *ḥadīths* and their reconciliation. Through his writings, al-

<sup>1</sup> This science is also called *Mushkil al-Ḥadīth*, *Taʿwīl al-Ḥadīth*, *Talfīq al-Ḥadīth*. All of these connote the same subject. See al-Khaṭīb, Muḥammad al-ʿAjjāj, *Uṣūl al-Ḥadīth*. p. 283.

<sup>2</sup> Al-Khulī, Muḥammad ʿAbd al-ʿAzīz, *Miftāḥ al-Sunnah*, Beirut, 1990, p. 159; al-Khaṭīb, Muḥammad ʿAjjāj, *Uṣūl al-Ḥadīth ʿUlūmuh wa Muṣṭalahuh*. p. 283.

<sup>3</sup> Al-Khaṭīb, Muḥammad ʿAjjāj, p. 283; Ibn Khaldūn, *al-Muqaddimah*. pp. 63-5.

<sup>4</sup> Al-Khaṭīb, pp. 284-5.

<sup>5</sup> Cf. Abdul Hayei Abdul Sukor, "Imām al-Shāfiʿī: Kepakaran dan Sumbangan kepada Pemikiran Ilmu ḥadīth", paper presented in *Seminar Pemikiran Islam (Multaqā al-Fikr al-Islāmī)*, 9-11th October 1989, Kuala Lumpur, p. 423.

Shāfi'ī lays down guidelines on how to overcome these apparent contradictions. In *al-Risālah* and especially *Ikhtilāf al-Ḥadīth*, he devotes the whole corpus to solving the phenomena. His guidelines are as follows;<sup>6</sup>

- i. If two *ḥadīths* are applicable at the same time, both should be used. If that is impossible, consideration should be given as to whether one of them has been abrogated.
- ii. *Ikhtilāf* resulted from both *ḥadīths* carrying indifferent rulings (*mubāḥ*).<sup>7</sup>
- iii. *Ikhtilāf* between two *ḥadīths* is where there is no indication as to which one is the abrogating and which is the abrogated *ḥadīth*. If both are of the same stature (sound), consideration should be given to the one which is closer to the meaning of the Qur'ān, the *sunnah* or *qiyās*.

Al-Shafi'ī emphasizes that the soundness of a *ḥadīth* is the yardstick in harmonizing between contradictory *ḥadīths*. By the above formula, he successfully solves many problems pertaining to apparent contradictory *ḥadīths*.

Below are some examples of how al-Shafi'ī applies his harmonizing interpretation in reconciling related problems.

## 8.2 Eating the Meat of Sacrifices (*akl luḥūm al-uḍḥiyyah*)

Apparently, there are many *ḥadīths* which seem to contradict each other on this subject, whether those who offer immolation are allowed to eat its meat or not.

<sup>6</sup> Al-Shāfi'ī, *Ikhtilāf al-Ḥadīth*. Ed. 'Amir Aḥmad Haydar. 1975. Beirut: Mu'assasat al-Kutub al-Thaqāfiyyah, pp. 64-5; cf. Schacht, *The Origins*, pp. 13-15. See also al-Bayhaqī, *Manāqib al-Shāfi'ī*, vol. I, pp. 510-511.

<sup>7</sup> Al-Shāfi'ī, *Ikhtilāf al-Ḥadīth*, pp. 67-8.

There is a *ḥadīth* related by al-Zuhrī - Abū 'Ubayd *mawlā* Ibn Azhar says,

"I celebrated (attended) 'Īd with 'Alī. I heard 'Alī was saying, "none of you should eat/consume the meat of his sacrifices after three [days]".<sup>8</sup>

On the other hand, there is a *ḥadīth* from Anas b. Mālīk who says,

"We slaughtered (sacrificed) our animals as Allāh wished, then we took the rest of it on our journey to Baṣrah".<sup>9</sup>

Al-Shāfi'ī in this connection argues that the *ḥadīth* of 'Alī which prohibits Muslims from eating the meat of a sacrifice after three days was abrogated by the *ḥadīth* of Anas b. Mālīk. According to him a report of this abrogation had not reached 'Alī.

### 8.3 *Nikāḥ al-Mu'ah*

As far as *nikāḥ al-mu'ah* (temporary marriage) is concerned, there is severe disagreement between the *sunnīs* and the *shī'īs* about its legitimacy. The *sunnīs* declare it *ḥarām* for it has been abrogated, while the *shī'īs*<sup>10</sup> argue that the *nikāḥ* is still valid.

<sup>8</sup> See Muwatta', (*aḍāḥī*) 26; Bukhārī, (*aḍāḥī*) 16; Tirmidhī, (*aḍāḥī*) 13.

<sup>9</sup> See Bukhārī, (*ḥajj*) 124; Tirmidhī, (*zuhd*) 74; Nasā'ī, (*ṣayd*) 35.

<sup>10</sup> Muḥammad b. al-Ḥasan al-Hurr al-'Āmilī, *Wasā'il al-Shī'ah ilā Tahṣil Masā'il al-Shārī'ah*. Ed. 'Abd al-Rahīm al-Rabbānī al-Shīrāzī. vol. VII. Beirut: Dār Iḥyā' al-Turāth al-'Arabī, pp. 436-496;

Al-Dahlawī comments that most of *ḥadīths* held by Shī'īs with regard to *mu'ah* are fabricated (*mawḍū'ah*), see Shāh 'Abd al-'Azīz Ghulām Hakīm al-Dahlawī, *Mukhtaṣar al-Tuḥfat al-Ithnā 'Ashariyyah*. Transl. from Persian by Ghulām Muḥammad b. Muhy al-Dīn b. 'Umar al-Aslamī. 1979, Turkey: Isik Kitaber, pp. 227-230.



In this controversy, al-Shāfi'ī cites two apparently contradictory *ḥadīths* to demonstrate his case. He adduces a *ḥadīth*<sup>11</sup> of 'Alī b. Abī Tālib who said to Ibn 'Abbās;

"The Apostle of Allāh banned *nikāḥ al-mu'āḥ* and the meat of donkeys".<sup>12</sup>

On the contrary, al-Shāfi'ī also cites a *ḥadīth* of Ibn Mas'ūd as follows,

"We were battling together with the Apostle of Allāh and our wives were not with us. Then, we intended to emasculate our testicles (*khaṣī*), but the Apostle of Allāh prohibited us. [As an alternative], he allowed us to marry a woman for a certain period by providing something [*mahr*: dowry]".<sup>13</sup>

From these two *ḥadīths*, al-Shāfi'ī endeavours to apply his harmonizing interpretation method. He analyzes the *ḥadīth* of Ibn Mas'ūd and finds that there is no mention of date to indicate whether the incident took place before or after the battle of Khaybar. He therefore concludes that the *ḥadīth* of 'Alī regarding the banning of *nikāḥ al-mu'āḥ* abrogates the one related by Ibn Mas'ūd. The *ḥadīth* of 'Alī implies that *nikāḥ al-mu'āḥ* is declared unlawful (*ḥarām*) forever.

Commenting on another related *ḥadīth* which was related by al-Rabī' b. Sabrah, al-Shāfi'ī interprets it as having some possibilities. One possible interpretation is that if the *ḥadīth* originates from the Prophet, it indicates that the Prophet had initially permitted *nikāḥ al-mu'āḥ*, but later declared it unlawful until the day of judgement.

<sup>11</sup> This *isnād* is al-Shāfi'ī - Sufyān - al-Zuhrī - al-Ḥasan & 'Abd Allāh b. Muḥammad b. 'Alī - 'Alī b. Abī Tālib.

<sup>12</sup> Al-Shāfi'ī, *Ikhtilāf al-Ḥadīth*, p. 215; Abū Ḥanīfah, *Musnad al-Imām Abī Ḥanīfah*, p. 132 says on the authority of Nāfi' - Ibn 'Umar that the Messenger of Allāh in the year of Khaybar's battle has banned the meat of donkeys and *mu'at al-Nisā'*.

<sup>13</sup> Al-Shāfi'ī, *Ikhtilāf al-Ḥadīth*, p. 215.

Otherwise if the *ḥadīth* does not come from the Prophet and at the same time there is no indication that the *ḥadīth* of ʿAlī abrogated the *ḥadīth* of Ibn Masʿūd or other *ḥadīths* allowing *muʿah*, the validity of the al-Rabīʿ's *ḥadīth* is questionable based on the evidence from the Qurʾān, the *sunnah* and *qiyās*.

Those who hold that *nikāḥ al-muʿah* is permitted argue that the banning took place in the year of Khaybar.<sup>14</sup> This is derived from the *ḥadīth* of ʿAbd al-ʿAzīz b. ʿUmar that says people practised *muʿah* during the year of victory (*ʿām al-fath*). However, al-Shāfiʿī refutes them by indicating that the *ḥadīth* of the year of victory is clearer than that of ʿAlī's in forbidding *muʿah* forever.<sup>15</sup>

#### 8.4 Tashahhud

Concerning *tashahhud*, a slightly variant reading might cause one to conclude that the recitation of *tashahhud* is *mukhtalaḥ*. For instance, ʿUmar recites it as follows,

*ʿal-taḥiyyāt lillāh, al-zākiyyāt lillāh, al-tayyibāt lillāh, al-salām ʿalayk ayyuhā al-nabī wa rahmat Allāh wa barakātuh, al-salām ʿalaynā wa ʿalā ʿibād Allāh al-ṣāliḥīn, ashhad an lā ilāh illā Allāh, wa ashhad anna Muḥammadan ʿabduh wa rasūluh*.<sup>16</sup>

Ibn ʿAbbās is reported to have said that the Prophet taught the Companions how to recite *tashahhud* as he taught them a *sūrah* of the Qurʾān. The wording is exactly

<sup>14</sup> For detailed arguments in favour of the Shīʿah, see ʿAllāmah Sayyid Ḥusayn al-Ṭabāṭabāʾī, *Shīʿite Islam*. Transl. from Persian and edited with an introduction and notes by Seyyid Hossein Nasr. 2nd. ed. 1977. Albany: State University of New York Press, pp. 227-230 (appendix II- *Muʿah* or Temporary Marriage)

<sup>15</sup> *Ikhtilāf al-Ḥadīth*. p. 216.

<sup>16</sup> *Al-Risālah*. p. 268; Mālik, *al-Mudawwanah al-Kubrā*. vol. I., p. 143. Mālik prefers the *tashahhud* of ʿUmar, while al-Shāfiʿī prefers Ibn Masʿūd's. See Ibn ʿAbd al-Barr al-Qurṭubī, *Kitāb al-Kāfī fī Fiqh Ahl al-Madīnah al-Mālikī*, vol. I., p. 204.

similar to the ones recited by ʿUmar. However, there is no prefix 'al' added to *al-salām*.<sup>17</sup>

According to al-Shāfiʿī, there are slight differences of letters (*hurūf*) between the transmission of the people of Baṣrah and that of Kūfah. These differences are not to be considered as contradictory. This could be that the Prophet had taught the *tashahhud* both in public and to individuals. So each of them memorized wordings which slightly differ from one another. In terms of its meaning, there is not much difference because what the recitation principally means is to glorify Allāh and to pray to Him to bless (*salām* and *ṣalawāt*) the Prophet.

### 8.5 *Ghusl al-Jumʿah*

There is a *ḥadīth*<sup>18</sup> reported by Abū Saʿīd al-Khudrī that the Prophet said;

'*Ghusl yawm al-jumʿah wājib ʿalā kull muḥtalim*'.<sup>19</sup>

'taking a bath on Friday is obligatory for every mature person'.

It is also reported<sup>20</sup> from ʿAbd Allāh b. ʿUmar that the Prophet said:

<sup>17</sup> *Al-Risālah*. p. 269; *Ikhtilāf al-Ḥadīth*. p. 70.

<sup>18</sup> The authority of this *isnād* is Mālik - Ṣafwān b. Sulaym - ʿAṭā' b. Yasār - Abū al-Khudrī. See *al-Risālah*. p. 302; *Ikhtilāf al-Ḥadīth*. p. 149

<sup>19</sup> *Al-Risālah*. p. 302; *Ikhtilāf al-Ḥadīth*. p. 149; Mālik, *al-Mudawwah al-Kubrā*. vol. I., p. 146..

<sup>20</sup> The *isnād* is Ibn ʿUyaynah - al-Zuhrī - Sālim - Ibn ʿUmar.

'*man jā' minkum al-jum'ah fa -l- yaghtasil*'<sup>21</sup>

'he who attends the *jum'ah* prayer should take a bath'

From the above-mentioned *ḥadīths*, it is literally understood that taking a bath on Friday is a compulsory act upon those who attend the *jum'ah* prayer. However, al-Shāfi'ī seems to disagree with the literal interpretation.

According to him, the Prophet's commandment to take a bath before Friday prayer denotes two possible interpretations. The most probable interpretation is that it is *wājib*. That means that *jum'ah* prayer will be invalid unless one takes a bath. This is similar to the invalidity of the purification of *janābah* without a major bath (*ghusl*).<sup>22</sup> On the other hand, it could also be interpreted that it is compulsory to take a bath in respect of it being for the sake of optional, moral and physical cleanliness.

Al-Shāfi'ī prefers the second interpretation basing it on circumstantial evidence between 'Umar and 'Uthmān. While 'Umar was giving his *khuṭbah*, 'Uthmān came without having had a bath except *wuḍū'*. The fact that 'Uthman had not taken a bath and that 'Umar did not insist on him doing so indicates that both of them

<sup>21</sup> *Al-Risālah*. pp. 302-3; *Ikhtilāf al-Ḥadīth*. pp. 148-9; For details see Bukhārī, (*jum'ah*) 2-3, 5-6, 12, 26, (*ādḥān*) 161, (*shahādāt*) 18; Muslim, (*musāfirīn*) 26, 27, (*jum'ah*) 1-2, 4, 6-8; Abū Dāwūd, (*ṭahārah*) 127, 828; Muwaṭṭa', (*jumu'ah*) 2, 4, 5.

<sup>22</sup> Al-Shāfi'ī, in *Ikhtilāf al-Ḥadīth* introduces this case by citing two verses of the Qur'an i.e. *al-Mā'idah*: 6 and *al-Nisā'*: 43. By doing so, he is convinced that the *sunnah* of the Prophet shows that *wuḍū'* is imposed when *ḥadath* (impurity) happens, while the second verse shows that *wuḍū'* is generally for *ḥadath* and Allah's order upon those who are in *janābah* to purify themselves (*ghusl*) is an evidence that *ghusl* is only imposed for *janābah* unless the Prophetic *sunnah* indicates otherwise.

This premise is to establish the argument that an obligatory bath is only imposed for those with *janābah*, not others i.e., those who are going to attend the Friday prayer. [see *Ikhtilāf al-Ḥadīth*, p. 148.]

understand Prophet's order of taking bath as a recommendable act (*aḥabb*), not an obligation.<sup>23</sup>

Al-Shāfi'ī is not alone in this opinion.<sup>24</sup> However, Aḥmad Muḥammad Shākir argues that al-Shāfi'ī's approach to the matter by interpreting an implicit text without substantiating any reason (*sabab*) or evidence is inadequate.<sup>25</sup>

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<sup>23</sup> *Ikhtilāf al-Ḥadīth*. p. 150.

<sup>24</sup> Ibn ʿAbd al-Barr, Mālik and Ibn Qutaybah also share the opinion that *wājib* in the *ḥadīth* does mean *wājib* as an obligation (*farḍ*), but it is interpreted as *wājib* in terms of a recommendable act as was done by the Prophet. See Ibn Qutaybah, *kitāb Taʾwīl Mukhtalaf al-Ḥadīth*. p. 251.

<sup>25</sup> Shākir in his note to *al-Risalah*, p. 306.

**PART TWO: AL-SHĀFI'Ī'S *KITĀB JIMĀ' AL-ʿILM***

## CHAPTER NINE: INTRODUCTION TO *KITĀB JIMĀ' AL-'ILM*

### 9.1 Introduction to *Jimā' al-'Ilm*

According to al-Nawawī, al-Shāfi'ī wrote or dictated<sup>1</sup> to his disciples about 113 books. These are mainly about *tafsīr al-Qur'ān*, *'ilm al-fiqh*, *'ilm uṣūl al-fiqh*, history, Arabic literature and others.<sup>2</sup> One of such writings is *Kitāb Jimā' al-'Ilm*<sup>3</sup>. *Jimā' al-'Ilm* can be classified under the subject of *uṣūl al-fiqh*, since it deals with topics like *ḥadīth*, *qiyās*, *ijmā'*, *ikhtilāf*, *ijtihād* and others which are the essential components of Islamic jurisprudence.

It is not known whether al-Shāfi'ī wrote *Jimā' al-'Ilm* himself or dictated it to his disciples in Egypt. It was transmitted to us by his most famous disciple in Egypt, al-Rabī' b. Sulaymān al-Murādī (174-270H).<sup>4</sup>

Since this work is not dated as was the convention of the medieval period, the only way to ascertain when this work was written is by using cross-references among al-Shāfi'ī's writings. There are passages in the *Jimā' al-'Ilm* in which al-Shāfi'ī refers to his *Risālah*<sup>5</sup>. In the year 198H, al-Shāfi'ī composed his *al-Risālah* at the request

<sup>1</sup> Aḥmad Muḥammad Shākir, *Introduction to al-Risālah*. 2nd. ed. 1979. Cairo: Dār al-Turāth, p. 9

<sup>2</sup> Al-Nawawī, *Tahdhīb al-Asmā' wa al-Lughāt*. p. 67; Ibn al-Nadīm, *al-Fihrist*. p. 264; Ibn Hajar, *Tawālīf al-Ta'sīs*. p. 145; al-Bayhaqī, *Manāqib al-Shāfi'ī*. vol. I. p. 246. Qal'ajī in his *Introduction to al-Sunan al-Ma'thūrah of al-Shāfi'ī*. p. 101, mentions about 140 books of al-Shāfi'ī's.

<sup>3</sup> This book was edited by Aḥmad Muḥammad Shākir in 1940, and by Aḥmad Muḥammad 'Abd al-'Azīz Zaydān in 1985.

<sup>4</sup> His full name is 'al-Rabī' b. Sulaymān b. 'Abd al-Jabbār b. Kāmil al-Murādī al-Mu'adhdhin. See al-Suyūṭī, Jalāl al-Dīn, *Ṭabaqāt al-Ḥuffāẓ*. p. 252; al-Subkī, *Ṭabaqāt al-Shāfi'iyyah al-Kubrā*. Ed. 'Abd al-Fattāḥ Muḥammad al-Ḥulw & Maḥmūd Muḥammad al-Ṭanāḥī. 1963. vol. II., pp. 132-139.

<sup>5</sup> See *Jimā' al-'Ilm*. paras. 62 and 103.

of ʿAbd al-Rahmān b. Maḥdī.<sup>6</sup> This point of view has been supported by Schacht.<sup>7</sup> Therefore, it is clear that the *Jimāʿ al-ʿIlm* was written in Egypt after the composition of *al-Risālah*, i.e. after 198H when al-Shāfiʿī came to settle in Egypt on 28th Shawwāl 198H.<sup>8</sup>

There is another book by al-Shāfiʿī that deals with *ḥadīth*. This is *Kitāb Ikhtilāf al-Ḥadīth*. Chronologically, this *Ikhtilāf* was composed after the *Jimāʿ*, since in *Ikhtilāf* al-Shāfiʿī refers to it.<sup>9</sup>

The *Jimāʿ* is not a new idea of al-Shāfiʿī's. Indeed, he had already dealt in the *Risālah* with the authority of *ḥadīth* in general and *ḥabār al-wāḥid* (isolated tradition) in particular. He gives priority in his writings, especially in *Risālah*, *Jimāʿ al-ʿIlm*, *Ikhtilāf al-Ḥadīth* and *Ikhtilāf Mālik wa al-Shāfiʿī* to the argumentation about *ḥabār al-wāḥid*. He adduces evidence and proofs to strengthen his point of view. He asserts that once a *ḥadīth* or *sunnah* is confirmed from the Prophet, a Muslim must accept it without questioning why or how.

Even though al-Shāfiʿī has dealt with the above matter in his previous books, his reassertion of his stand on *ḥabār al-wāḥid* clearly indicates that he was committed to the authority of *ḥadīth* and to refute the doctrine of those who rejected the authority of the *ḥadīth* in general, or repudiated specifically the validity of *ḥabār al-*

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<sup>6</sup> Aḥmad Muḥammad Shākir, *Introduction to al-Risālah*, p. 12.

<sup>7</sup> Schacht, *The Origins of Muhammadan Jurisprudence*, appendix I (chronology of al-Shāfiʿī's writings). According to Shākir, all books which exist until today were composed by al-Shāfiʿī in Egypt. [see *Introduction to al-Risālah*, p. 9]

<sup>8</sup> Al-Najjār, *Introduction to al-Umm*, p.(waw).

<sup>9</sup> Al-Shāfiʿī, *Kitāb Ikhtilāf al-Ḥadīth*, pp. 37 and 54. He also refers here to *al-Risālah* (*Kitābī*), p. 64.



*khāṣṣah* (i.e. *khavar al-wāhid*). However, it should be noted that the *Jimāʿ* is not a carbon copy of the *Risalah*. In the *Jimāʿ* he expands on matters which he has mentioned in the *Risalah* and he mentions briefly in the *Jimāʿ* what he has already given at length in the *Risalah*.<sup>10</sup>

## 9.2 Sources

The only available manuscript of *Kitāb Jimāʿ al-ʿIlm* is the one which is preserved in Dār al-Kutub al-Miṣriyyah (no. 732-*fiqh Shāfiʿī*). So far it is the only manuscript that has been found after a thorough investigation. According to the editor of the edition printed by Amīriyyah and Dār al-Maʿārif,<sup>11</sup> its condition is very bad, while Shākir who also consulted the manuscript found it worse than described by the earlier editor.<sup>12</sup>

There are several editions of *Jimāʿ*. Among them are;

- i. that printed on the margin of *kitāb al-Umm* by al-Bulāq: al-Amīriyyah press in 1326H.
- ii. that on the margin of *al-Umm* by Dār al-Maʿārifah press, no date.
- iii. Shākir's edition, printed in Cairo 1940/1359H by Maʿārif press.

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<sup>10</sup> Aḥmad Muḥammad Shākir, *Introduction to Kitāb Jimāʿ al-ʿIlm*, p. 7.

<sup>11</sup> Muḥammad Zuhrī al-Najjār notes this description in *al-Umm*, vol. VII, p. 284.

<sup>12</sup> Shākir, *Introduction to Jimāʿ*, p. 9.

iv. The latest edition, that of Muḥammad Aḥmad b. ʿAbd al-ʿAzīz Zaydān, 1984/1405H.<sup>13</sup>

### 9.3 Methodology

In studying the text of *Jimāʿ al-ʿIlm*, I have made use of the above printed works by comparing them with one another, since I was unable to procure the manuscript from Cairo.

In my study of the text, I have tried to trace the development of al-Shāfiʿī's thought on *ḥadīth* through information scattered in works he wrote both before and after the *Jimāʿ*. By doing so, I was trying to establish the link between *al-Risālah*, *Jimāʿ* and *Ikhtilāf al-Ḥadīth* as these are the most important sources from which one can establish al-Shāfiʿī's opinion on *ḥadīth*.

### 9.4 Opponents

Al-Shāfiʿī, in his writings, makes masterly use of the form of a dialogue with opponents usually unnamed<sup>14</sup>. *Jimāʿ* also uses this form.

The opponents with whom al-Shāfiʿī conducted a dialogue and discourse in the *Jimāʿ* are unknown. However, in the introduction of *Jimāʿ*, al-Shāfiʿī states that those

<sup>13</sup> Muḥammad Aḥmad ʿAbd al-ʿAzīz Zaydān, *Introduction to Kitāb Jimāʿ al-ʿIlm*. Beirut: Dār al-Kutub al-ʿIlmiyyah, 1984, p.4.

<sup>14</sup> Heffening, "al-Shāfiʿī", *The Encyclopaedia of Islam*. p. 253.

who do not accept *akhbār* or *ḥadīths* from the Prophet are *ahl al-kalām* and some jurists.<sup>15</sup>

Later authorities suggest that the opponents who rejected all kind of *ḥadīths* are *ahl al-kalām*<sup>16</sup> generally and the Muʿtazilah specifically. Al-Shāfiʿī clearly states these groups were from Baṣrah, and Baṣrah was a centre of *ahl al-kalām*, including the Muʿtazilah.<sup>17</sup> They were known as opponents of *ahl al-ḥadīth* (anti-traditionists). Al-Khuḍarī for example, concludes that most probably these opponents were the Muʿtazilah.<sup>18</sup> He further strengthens his point of view by quoting Ibn Qutaybah's *kitāb Mukhtalaf al-Ḥadīth* where the latter states that the *ahl al-kalām* had accused the *ahl al-ḥadīth* of narrating *akhbār* which seem to be contradictory.<sup>19</sup>

However, Muḥammad Abū Zahrah<sup>20</sup> seems to oppose that point of view by saying that the opponents were most likely *zanādiqah* and some of the *Khawārij*, as mentioned by ʿAbd al-Rahmān b. Mahdī.<sup>21</sup> This view is supported by the fact that *Zanādiqah*, *Khawārij*<sup>22</sup> and *Azāriqah*<sup>23</sup> maintain the doctrines that i) there is only one

<sup>15</sup> Al-Shāfiʿī, *Kitāb Jimāʿ al-ʿIlm*. pp.11-12.

<sup>16</sup> According to J. Schacht, *ahl al-kalām* in al-Shāfiʿī's term is engaged to the Muʿtazilah. See J. Schacht, *The Origins of Muhammadan Jurisprudence*. p. 40.

<sup>17</sup> Al-Khuḍarī, *Tārīkh al-Tashrīʿ al-Islāmī*. pp. 155 & 157; Abū Zahrah, *al-Shāfiʿī*. p. 218; al-Sibāʿī, *al-Sunnah wa Makānatuhā fī al-Tashrīʿ al-Islāmī*. p. 148.

<sup>18</sup> Al-Khuḍarī, *Tārīkh al-Tashrīʿ al-Islāmī*. p. 155.

<sup>19</sup> Ibn Qutaybah, *Taʾwīl Mukhtalaf al-Ḥadīth*. pp. 5, 8 and pasim.

<sup>20</sup> Abū Zahrah, *al-Shāfiʿī*. p. 218.

<sup>21</sup> Shākir, *Introduction to al-Risālah*. pp. 9-12.

<sup>22</sup> Ibn Hazm, *Kitāb al-Faṣl fī al-Mīlāl wa al-Ahwāʾ wa al-Nihāl*. vol. IV. Egypt: Maṭbaʿat al-Tamaddun, 1321H, p. 189; Abū Zahrah, *al-Shāfiʿī*. pp. 218-9.

obligatory *raka'ah* in prayer in the morning and one in the evening, ii) they rejected the punishment for stoning (*rajm*) at the adulterer, for they relied only on the Qur'ān and did not accept *ḥadīths* of the Prophet which clarify and explain what is mentioned in the Qur'ān.

#### 9.4.1 The Rejection of *Ḥadīths*

As far as the rejection of *ḥadīths* is concerned, al-Shāfi'ī lists at least three different doctrines held by various groups. These doctrines are,

- i. rejecting *ḥadīths* altogether,
- ii. rejecting *ḥadīths* that are not explanation of the Qur'ān,
- iii. accepting all *ḥadīths* in principle but rejecting some *akhbār al-āḥād*.

As far as the first doctrine is concerned, it is believed that Khawārij, Zanādiqah and some Mu'tazilah held this point of view. The reason why they do was that they were sceptical about transmitters of *ḥadīths* in terms of accuracy of the Prophet's *ḥadīths* and mistakes and errors made by them.

This led them solely to rely on the Qur'ān, for the transmission of it is guaranteed from any mistake and error. Having believed that the Qur'ān is the sole source of laws, the Khawārij were led to hold that there is no stoning (*rajm*) punishment applied to adulterers; that the thief's hand should be amputated up to the

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<sup>23</sup> Keith Lewinstein, "The Azāriqa in Islamic Heresiography", *BSOAS*, LIV, 1991, p. 261.

shoulder<sup>24</sup> and other matters, since they did not accept *ḥadīths* concerning those matters.

The second doctrine i.e. rejecting *ḥadīths* that are not explanation of the Qur'ān, implies two possibilities. First, *ḥadīths* seem likely to be rejected. For, if *ḥadīths* either *mutawātir* or *āḥād* are not in agreement with the meaning of the Qur'ān, they will reject them. Second, *ḥadīths* will not establish any ruling unless there is a basis in the Qur'ān. In the sense that the Qur'ān is a primary source in Islam. Therefore, they reject rulings derived from *ḥadīth* which do not exist in the Qur'ān such as the banning of the meat of donkeys and others.

The third doctrine i.e. rejecting *akhbār al-āḥād*. For this doctrine, see chapters Three and Six.

As far as al-Shāfi'ī's opponent is concerned, the only one who has mentioned the personality of an opponent in Egypt is Nyberg,<sup>25</sup> who suggests that the Mu'tazilah leader in Egypt, Ibn 'Ulayyah,<sup>26</sup> had a disputation with al-Shāfi'ī, and so probably was one of the Mu'tazilīs whose dialogue has been recorded in the *Jimā'*.

As has been elaborated before, there are two theories applicable to the *Jimā'*. Most authors agree that the *ahl al-kalām* whom Shāfi'ī was addressing were the

<sup>24</sup> Ibn Ḥazm, *Kitāb al-Faṣl fī al-Milal wa al-Ahwā' wa al-Niḥal*, vol. IV. p. 189; Muḥammad Abū Zahrah, *al-Shāfi'ī*, pp. 212, 217-218; Keith Lewinstein, "The Azāriqa in Islamic Heresiography", *BSOAS*, LIV, 1991, p. 261.

<sup>25</sup> H. S. Nyberg, "al-Mu'tazila", *S.E.I.*, vol. VI, p. 791.

<sup>26</sup> Ibn al-Nadīm mentions Ibn 'Ulayyah's works as follows: *kitāb al-Tafsīr*, *kitāb al-Tahārah*, *kitāb al-Salāh* and *kitāb al-Manāsik*.

Mu<sup>c</sup>tazilah. On this basis it would seem appropriate to identify the people to whom al-Shāfi<sup>c</sup>ī may have referred to.

One of those persons suggested was Ibn ʿUlayyah.<sup>27</sup> He was one of the *ahl al-kalām* who believed in the createdness of the Qurʾān,<sup>28</sup> and was one of the Mu<sup>c</sup>tazilites of Baṣrah who later settled in Egypt.

The debate (*mujādalāh*) between al-Shāfi<sup>c</sup>ī and Ibn ʿUlayyah<sup>29</sup> may have taken place both<sup>30</sup> in Baghdād and Egypt.<sup>31</sup> Biographical references about al-Shāfi<sup>c</sup>ī, such as in al-Khaṭīb al-Baghdādī's *Tārīkh Baghdād*, al-Bayhaqī's *Manāqib al-Shāfi<sup>c</sup>ī*, Ibn Abī Hātim's *ʿĀdāb al-Shāfi<sup>c</sup>ī wa Manāqibuh* and Ibn ʿAbd al-Barr's *al-Intiqāʾ* demonstrate that the *mujādalāh* between them was about the validity of *khavar al-wāḥid* (*tathbīt ḥujjiyyat khavar al-wāḥid*).

The subject of disputation as recorded in previous books is likely to be similar to that of *Jimāʿ al-ʿIlm*, i.e. *tathbīt ḥujjiyyat khavar al-wāḥid*. In the beginning of the

<sup>27</sup> Al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād*. vol. VI. p. 20.

His full name is Ibrāhīm b. Ismāʿīl b. Ibrāhīm b. Muqsim [Miqsam], Abū Ishāq al-Baṣrī al-Asadī, known as Ibn ʿUlayyah. al-Bayhaqī, *Manāqib al-Shāfi<sup>c</sup>ī*. vol. I. p. 211.

According to Muḥammad b. al-Ḥasan al-Ḥajawī al-Thaʿālibī al-Fāsī, Ibn ʿUlayyah's name is Abū Bishr Ismāʿīl b. Ibrāhīm b. Muqsim al-Asadī, who came from Baṣrah, a *ḥāfiẓ* and a knowledgeable scholar. He died in the year 193H. See. al-Ḥajawī, *al-Fikr al-Sāmī*. vol. I. p. 426. Cf. *Tārīkh Baghdād*. vol. XI, p. 152; *Tadhkirah al-Ḥuffāẓ*. vol. I, p. 296 and *Tahdhīb al-Tahdhīb*. vol. I, p. 275.

<sup>28</sup> Al-Baghdādī, *Tārīkh Baghdād*. vol. VI. p.20.

<sup>29</sup> There is a book written by al-Shāfi<sup>c</sup>ī against Ibn ʿUlayyah entitled *Kitāb al-Radd ʿalā Ibn ʿUlayyah*. Ibn Nadīm, *al-Fihrist*. Beirut. p. 298.

<sup>30</sup> If we accept the date of Ibn ʿUlayyah's death as stated by al-Ḥajawī in *al-Fikr al-Sāmī* i.e. in the year 193H, there will be a problem, because biographical references show that al-Shāfi<sup>c</sup>ī went to Egypt in the year 198/9H. Moreover, comparing al-Bayhaqī, *Manāqib al-Shāfi<sup>c</sup>ī*. vol. I, p.21ff and al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād*. vol. VI, p. 26 it seems that *munāẓarāt* between al-Shāfi<sup>c</sup>ī and Ibn ʿUlayyah took place in Egypt. So, if we rely on al-Ḥajawī, there will a gap of time, and the discussions would not have happened because by that time Ibn ʿUlayyah had already passed away.

<sup>31</sup> *Ibid.*

*Jimāʿ*, al-Shāfiʿī illustrates that *ahl al-kalām* were widely divided about the validity of *khavar al-wāḥid*<sup>32</sup>. Thus, it may well be the case that one of the people whom al-Shāfiʿī was addressing in the *Jimāʿ* was Ibn ʿUlayyah.

On one occasion, Ibn ʿUlayyah had attended a study circle (*ḥalaqah*) led by al-Shāfiʿī. This circle was attended by many people, including Aḥmad b. Ḥanbal, al-Ḥusayn al-Qallās<sup>33</sup> and a group of *ahl al-ḥadīth*.<sup>34</sup> In this circle, al-Shāfiʿī was presenting a lecture on *khavar al-wāḥid*. In other words, he had a discourse on that subject with Ibn ʿUlayyah. One of the audience questioned al-Shāfiʿī as to why he gave priority to Ibn ʿUlayyah, a heretic (*mubtadiʿ*), whereas there were important people who attended his lecture. In reply, al-Shāfiʿī justified what he had done by saying that his argument with Ibn ʿUlayyah was more useful than a discussion with the others. This seems a fair reply because no one else in the audience except Ibn ʿUlayyah queried or rejected the validity of *khavar al-wāḥid*.

The discussion of the validity of *khavar al-wāḥid* is reported as follows. Al-Shāfiʿī asks Ibn ʿUlayyah about the proof (*ḥujjah*) because the latter considers only *ijmāʿ* as proof (*ḥujjah*). Al-Shāfiʿī then asks Ibn ʿUlayyah if he accepts a *khavar* transmitted by a single reliable person (*khavar al-wāḥid al-ʿadl*) according to his

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<sup>32</sup> Al-Shāfiʿī, *Jimāʿ al-ʿIlm*, p. 12.

<sup>33</sup> Al-Ḥusayn was one of al-Shāfiʿī's prominent disciples in memorising *ḥadīth*. See al-Subkī, *Ṭabaqāt al-Shāfiʿiyyah al-Kubrā*, vol. II, p.127.

<sup>34</sup> Al-Bayhaqī, *Manāqib al-Shāfiʿī*, vol. I, p. 211.

theory of *ijmā'* as being the only proof? The narrative goes on to suggest that Ibn 'Ulayyah was unable to provide a satisfactory answer to this question.<sup>35</sup>

'Abd Allāh b. Sāliḥ,<sup>36</sup> the secretary (*kātib*) of al-Layth<sup>37</sup> has also reported a discussion between al-Shāfi'ī and Ibn 'Ulayyah in connection with the validity of *khābar al-wāḥid*. They were in al-Shāfi'ī's circle (*majlis*) in which he was delivering a lecture on the validity of *khābar al-wāḥid* from the Prophet. As was commonly practiced at that time, they wrote down what their teacher said. At the end of the lecture, they brought what they had written from al-Shāfi'ī's lecture to Ibn 'Ulayyah, one of Abū Bakr al-Aṣamm's disciples. The author adds that the latter had study circles in Egypt at *Bāb al-Dawāl*.

They started reading in front of Ibn 'Ulayyah what they had taken down from al-Shāfi'ī. Immediately, he started vehemently to attack the content of al-Shāfi'ī's lecture, and tried to refute it. They wrote down Ibn 'Ulayyah's arguments against al-Shāfi'ī's views. They then returned to al-Shāfi'ī and read to him the argument of Ibn 'Ulayyah. According to 'Abd Allāh b. Sāliḥ, al-Shāfi'ī rejected and refuted the arguments put forward by Ibn 'Ulayyah. Al-Shāfi'ī then said: Ibn 'Ulayyah is astray (*ḍāll*), sitting in front of *Bāb al-Dawāl* (the gate of stray animals), and he leads people astray.

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<sup>35</sup> *Manāqib al-Shāfi'ī*, vol. I, p. 211.

<sup>36</sup> His full name is 'Abd Allāh b. Sāliḥ b. Muḥammad b. Muslim al-Jahanī (d. 223H). see al-Suyūṭī, *Tabaqāt al-Huffāz*, p. 169.

<sup>37</sup> Al-Layth b. Sa'd b. 'Abd al-Raḥmān al-Fahmī Abū al-Ḥārith al-Miṣrī (74-175H). See al-Suyūṭī, *Tabaqāt*, p. 95.



In *Tārīkh Baghdād*, al-Jāwardī is quoted as saying that al-Shāfi'ī opposed Ibn 'Ulayyah in every matter<sup>38</sup>. How far this statement is correct or not cannot be ascertained. However, it is obvious from the above two stories that al-Shāfi'ī and Ibn 'Ulayyah were together and tried to refute each other and the topic of their discussion in each case was the validity of *khavar al-wāḥid*.

It is also reported that Ibn 'Ulayyah cooperated with 'Isā b. Abān<sup>39</sup> in writing a book against al-Shāfi'ī trying to refute him.<sup>40</sup>

There were others of the Mu'tazilah sect who had disputes and debates with al-Shāfi'ī. These people were concerned about theological matters rather than jurisprudence. Among them were Ḥafṣ al-Fard, Bishr al-Marīsī, Sufyān b. Sakhtān and others. Thus it could be suggested that Ibn 'Ulayyah represents the opponents who appear in *Kitāb Jimā' al-'Ilm*.

As the previous discussion reveals, Ibn 'Ulayyah seems to be one of the people with whom al-Shāfi'ī had a discussion in *Jimā' al-'Ilm*. Therefore, in order to prove the above statement, I have established that there are similarities in the discussion between *Jimā' al-'Ilm*, al-Bayhaqī's *Manāqib* and al-Baghdādī's *Tārīkh Baghdād*. For the latter clearly mentions the opponent's name. Thus, the theory put forward that Ibn 'Ulayyah was one of the opponents in *Jimā'* can be relied on.

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<sup>38</sup> Al-Bayhaqī, *Manāqib al-Shāfi'ī*, vol. II, p. 409.

<sup>39</sup> 'Isā b. Abān was mainly a Ḥanafite jurist cf. *Fihrist*, 205; W. Montgomery Watt, *The Formative Period of Islamic Thought*, Edinburgh, 1973, p. 203.

<sup>40</sup> Al-Khatīb al-Baghdādī, *Tārīkh Baghdād*, vol. VI, p. 20.

In the *Jimāʿ*,<sup>41</sup> the opponent describes *ʿilm* (knowledge) as of different kinds. Among them are what *ʿāmmah* (many people) have transmitted from *ʿāmmah*, *kitāb* which can be interpreted into different possible meanings, *ijmāʿ al-muslimīn* (the consensus of Muslims), *ʿilm al-khāṣṣah* (knowledge (*ḥadīth*) possessed by specialists) and *qiyās*. The most remarkable statement adduced by him is that "*ijmāʿ* is a proof against any thing, because it is impossible that a mistake can occur in it".<sup>42</sup> This statement could be interpreted in the broad sense that *ijmāʿ* is a gauge by which the validity of other proofs is measured. For instance, a *khābar* would be accepted or rejected by relying on an existing *ijmāʿ*. If there is an *ijmāʿ* that they accept such a *khābar*, he would accept that *khābar*. It is the other way round if there were disagreements among *ahl al-ʿilm*<sup>43</sup> on the acceptance of a *khābar*. According to him, it would be a mistake to accept such a *khābar* if the Muslims disagreed on it, and his doctrine stated that proof (*ḥujjah*) would not be established on a matter where there is the possibility of a mistake.<sup>44</sup>

According to al-Shāfiʿī, the view held by the opponent seems to invalidate *akhbār*, and at the same time to confirm the *ijmāʿ*, because the opponent believes that their *ijmāʿ* is a proof irrespective of whether there is a *khābar* or not, and their disagreement is not a proof irrespective of whether there is a *khābar* or not.<sup>45</sup> This

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<sup>41</sup> Al-Shāfiʿī, *Jimāʿ al-ʿilm*. pp. 49-53.

<sup>42</sup> Para. 187, "wa al-ijmāʿ ḥujjah ʿalā kull shayʿ, li annahu lā yumkin fīh al-khaṭaʾ".

<sup>43</sup> As far as *ijmāʿ* is concerned, there is a discussion about who is *ahl-ʿilm* whose *ijmāʿ* will be a *ḥujjah*. Are they *fuqahāʾ* or *ahl al-kalām*, see *Jimāʿ*. pp. 53-4.

<sup>44</sup> *Jimāʿ*. para. 192.

<sup>45</sup> *Jimāʿ*. para. 193.

statement produced by al-Shāfi'ī resembles what happened between him and Ibn 'Ulayyah as reported in biographical references.<sup>46</sup> In this context, al-Shāfi'ī is reported to have asked [as recorded in *Manāqib al-Shāfi'ī*] Ibn 'Ulayyah concerning *khavar al-wāḥid al-ʿadl* whether he rejects it on the basis of *ijmāʿ* or not, since the latter's belief is that *ijmāʿ* is a proof against every thing as shown before.

To sum up, the dialogues in *Jimāʿ al-ʿIlm* concur well with what has been recorded by al-Bayhaqī and al-Baghdādī concerning *tathbīʿ khavar al-wāḥid*. Therefore, Ibn 'Ulayyah seems to be one of the opponents in *kitāb Jimāʿ al-ʿIlm*.

A perusal of *Jimāʿ* reveals that al-Shāfi'ī had a discussion with more than one opponent. In certain places, he refers to the opponent as *jamāʿah* (a group of people), *baʿḍ* (some of). So, it would be inaccurate to describe Ibn 'Ulayyah as the only opponent, because *Jimāʿ* deals with different topics. However, this might be correct in terms of the topic *tathbīʿ khavar al-wāḥid*.

## 9.5 The Dispute Between 'Abd al-Ghanī b. 'Abd al-Khālīq and Others

Do the Muʿtazilah of Baṣrah reject *sunnah* as decisive proof?<sup>47</sup> As far as *Jimāʿ al-ʿIlm* with regard to the opponents to whom al-Shāfi'ī had discussions with is concerned, there are different views about it. The first view is that they are the Muʿtazilah. This idea is shared by Muḥammad al-Khuḍarī,<sup>48</sup> Muḥammad Abū

<sup>46</sup> For instance, al-Bayhaqī, *Manāqib al-Shāfi'ī*, vol. I, p. 211.

<sup>47</sup> 'Abd al-Ghanī 'Abd al-Khālīq, *Hujjiyyat al-Sunnah*, 2nd. ed., 1993. Cairo: Dār al-Wafā' li al-Ṭabā'ah wa al-Nashr wa al-Tawzīʿ, p. 36-7 citing al-Subkī and others, *Tārīkh al-Tashrīʿ al-Islāmī*, pp. 202-3.

<sup>48</sup> *Tārīkh al-Tashrīʿ al-Islāmī*, pp. 155.

Zahrah,<sup>49</sup> Muṣṭafā al-Sibā<sup>cī</sup>,<sup>50</sup> al-Subkī,<sup>51</sup> al-Sā'is and others. The second view is that of °Abd al-Ghanī °Abd al-Khāliq who does not accept the above view. Al-Khuḍarī as a representative and others give a positive response to the above question.

The following is a summary of al-Khuḍarī's arguments: There is a group who repudiate *sunnah* altogether, and rely solely on the Qur'ān. This statement is inferred from the *Jimā'*. From the discussion of the *Jimā'*, he concludes that this group only reject *akhbār* which do not engender definitive knowledge (*ilm*) because of the possibility of a mistake and forgetfulness in the transmitters; they do not repudiate the *sunnah* as such. This means, that if a *sunnah* is confirmed through a way that engenders definite knowledge, such as *sunnah mutawātirah*, they will accept it.

In the meantime, he makes a statement which can be understood to mean that there is a group who reject the *sunnah* as such, and a group who repudiate that part of the *sunnah* which is not an explanation of any Qur'ānic text.

In the conclusion, al-Khuḍarī attempts to identify those personalities whom al-Shāfi'ī does name, as belonging to Baṣrah. And analogically, he concludes that this group belongs to the Mu'tazilah, because at that time Baṣrah was a centre for theological (rationalists) movements and they were known as adversaries to *ahl al-ḥadīth*. Therefore, according to him, the Mu'tazilah is the most likely to be the group referred to. To strengthen his hypothesis he refers to Ibn Qutaybah's *Ta'wīl Mukhtalaf al-Ḥadīth*.

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<sup>49</sup> Abū Zahrah, *al-Shāfi'ī*, pp. 64ff.

<sup>50</sup> *Al-Sunnah wa Makānatuhā fī al-Tashrī' al-Islāmī*, pp. 148-151.

<sup>51</sup> °Abd al-Latīf al-Subkī, *Tārīkh al-Tashrī' al-Islāmī*, Egypt. n.d.

According to ʿAbd al-Ghanī, he does not find any word or expression of al-Shāfiʿī or the opponents themselves which shows that some leaders of the Muʿtazilah reject a decisive proof of *sunnah* as such.<sup>52</sup> However, they reject it because it has not been absolutely established as coming from the Prophet in the way that the Qurʾān has. For that reason, according to him, they reject both *khavar al-wāḥid* and *tawātur ḥadīths* because neither of them engender definitive and certain knowledge, whether the *ḥadīth* explains the Qurʾān or independently establishes a ruling which is not existed in the Qurʾān.<sup>53</sup>

As far as the rejecting of *tawātur ḥadīths* is concerned, al-Shāfiʿī's opponent has been convinced by the arguments mentioned by al-Shāfiʿī, admits that his companions hold two views. The first group does not accept *ḥadīth*. Thus, this group does not accept the number of *rakaʿahs* in *ṣalāh* which has been confirmed by *tawātur ḥadīths*.

As far as the rejection of *mubayyin ḥadīth* is concerned, the opponent has mentioned earlier that the Qurʾān is *qatʿī al-thubūt* and those who reject one single letter of it are infidel, whereas making distinction between its expressions (*alfāz*) by *akhbār* which are *ẓannī al-thubūt*, does not make those who deny them infidel. Logically, if acting according to either *tawātur* or *mubayyin ḥadīths* is impossible, it is even more impossible either by *khavar al-wāḥid* or an independent *khavar* which establishes new rulings.

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<sup>52</sup> ʿAbd al-Ghanī, *Hujjiyyah al-Sunnah*, p. 260.

<sup>53</sup> ʿAbd al-Ghanī, pp. 36, 246.

From the above elaboration, ʿAbd al-Ghanī strongly advocates that they reject *khavar* altogether. That is, they should reject it because it has the possibility of being mistaken, or forgetfulness and falsehood on the part of its transmitters, even though they have reached the number of *tawātur*.<sup>54</sup> ʿAbd al-Ghanī strongly denies that they reject *sunnah* as such, because if they were contemporaries with the Prophet, heard his saying or saw his deeds, they would make *sunnah* as decisive argument.

According to ʿAbd al-Ghanī, al-Khuḍarī had acknowledged that the opponent does not deny *sunnah* as an argument. However, by referring to the wordings used by opponents clearly show that there are two trends of thought; it seems that one of them does not accept *khavar* in which there is *bayān* in the Qurʾān. In that sense, Abd al-Ghani totally disagrees with al-Khuḍarī in that view, because, if the opponent maintains the view that *khavar* is not a decisive argument except for the Qurʾān, for the latter is sufficient argument. So, there is no need for other arguments in explaining these rulings.

As far as *sunnah* is concerned, it is not a genuine argument, nor *mubayyinah* or a *khavar* which establishes an independent ruling, as understood by al-Khuḍarī. On the contrary, ʿAbd al-Ghanī argues that *sunnah* is in fact a decisive argument (*ḥujjah*), however it is impossible for anyone who did not see the Prophet to confirm it as definitely coming from him because of the possibility of transmitters' mistakes and falsehood which may happen in any *khavar* even if it is *mutawātir*. In this case, *sunnah* will not constitute any ruling, and one should rely on the Qurʾān, the reliable

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<sup>54</sup> ʿAbd al-Ghanī, p. 260.

thing that can be certain. The expression "*wa fī Kitāb Allāh al-bayān*- and there is a *bayān* in the Qur'ān" means that the *bayān* that we are required to follow is in the Qur'ān only. As far as the *bayān* of the *sunnah* is concerned, adhering to it does not bind us because of the impossibility of it being certain.

One might notice that al-Shāfi'ī mentions a few passages of the Qur'ān which confirm the authority of *sunnah*. The reason why he did so was due to the idea that the opponent was particularly arguing about that. °Abd al-Ghanī responded by saying that al-Shāfi'ī intended that as an introduction to confirm the obligation to accept the *khavar*, and depend upon the transmission of reliable persons (*thiqāt*). He does this firstly to confirm that the authority of the *sunnah* applies not only to those who are contemporary with the Prophet, but also to those who come after them until the Day of Judgement. Then he clarifies that it is illogical that Allāh should impose the acceptance of the *sunnah* on those who came after the Companions, then leave it without any means to enforce it. He makes a clear statement that there is no other way except transmission (*riwāyah*).

°Abd al-Ghanī raises a question from the conversation between al-Shāfi'ī and his opponent, that there is no such indication of *sunnah* as a decisive argument based on his words "*Idh kunta lam tushāhidhu*"-"for you haven't seen him". This statement shows that the opponent admits and recognises *sunnah* as a decisive argument, if he has witnessed the Prophet or heard his sayings. Al-Shāfi'ī tries to demonstrate that *khavar al-khāṣṣah* and *khavar al-°āmmah* takes the place of eyewitnesses (*mushāhadah*).

‘Abd al-Ghanī strengthens his point by referring to al-Shāfi‘ī's statement in the beginning of *Jimā‘ al-‘Ilm*, "*thumm tafarraḡ ahl al-kalām fī tathbīt al-khabar ‘an Rasūl Allāh*-then *ahl al-kalām* divided about *tathbīt al-khabar* from the Apostle of Allāh". For this statement, a question arises whether it is possible or not to confirm the *khabar* as coming from the Prophet, and not the question of *sunnah* as a decisive argument or not.

According to ‘Abd al-Ghanī, by observing words used by al-Shāfi‘ī, it is clear what he meant. Al-Shāfi‘ī, when he turns to talk about the *sunnah* as a decisive argument, does not express it by the word *khabar*. Instead he uses the word *sunnah* or the command or deeds of Prophet. And whenever he wants to talk about the way of transmission (*ṭarīq*), he expresses it by using the term "*khabar* from the Messenger of God".

In conclusion, ‘Abd al-Ghanī says that if we accept that the opponent rejects the authority (*ḥujjiyyah*) of the *sunnah*, he will not belong to the Mu‘tazilah, which is the opposite of al-Khuḍarī's findings. These findings, he claims, are based on classical books such as the books on *Uṣūl*, *tawḥīd* or *firaq* (sects). According to him, nothing in those books mentions that any of the Mu‘tazilah reject the authority of *sunnah*. He refers to Abū Maṣṣūr al-Baghdādī's *Uṣūl al-Dīn* where it is mentioned that al-Nazzām assumed that there is no *hujjah* in *khabar mutawātir*, since a falsehood might happen in it. According to the Nazzāmiyyah, it is possible that the *ummah* might agree upon a mistake. This statement, according to ‘Abd al-Ghanī, does not signify that the Nazzāmiyyah and others were rejecting the authority of the *sunnah* as such. On the contrary, it is evident that they accept the authority of it when they justify the



rejection of *mutawātir* because of the possibility of falsehood in the reporters. They doubt the way it comes (*tarīq*) from generation to generation, not as a *ḥadīth* from the Prophet.

## 9.6 Discourses (*munaẓarāt*) Between al-Shāfi'ī and Muḥammad b. Ḥasan al-Shaybānī

As mentioned earlier, it seems that al-Shāfi'ī's opponent in *Jimā' al-ʿIlm* might be more than one person. Therefore, I have tried to relate some similar issues found in *Jimā' al-ʿIlm* and bibliographical references to show that al-Shaybānī could have been involved in *Jimā' al-ʿIlm*. Para. 248 of the *Jimā' al-ʿIlm* could be similar to the *munaẓarah* between al-Shāfi'ī and Muḥammad b. Ḥasan al-Shaybānī as recorded by al-Bayhaqī.<sup>55</sup> The subject-matter was about the credibility of their companions in issuing *fatwās*.

It has been reported that after al-Shāfi'ī had copied a large number of books<sup>56</sup> from Muḥammad b. Ḥasan's collection when he visited Irāq, and studied them in depth, he is reported to have quoted a *ḥadīth* on every case where he disagreed with al-Shaybānī's view.<sup>57</sup> It is reported that *al-Hujjah* or *al-Mabsūt* are allegedly written against the Ḥanafī *madhhab*.<sup>58</sup>

<sup>55</sup> *Manāqib al-Shāfi'ī*, vol.I. p. 182.

<sup>56</sup> Ibn Abī Ḥātim al-Rāzī, *Ādāb al-Shāfi'ī*, p. 33-4.

<sup>57</sup> That is why al-Shāfi'ī was called "*Nāṣir al-Sunnah*" because at that time *ahl al-ra'y* or particularly the Ḥanafite *madhhab* were in a stronger position than *ahl al-ḥadīth* and *ahl al-ḥadīth* could not defend certain doctrines argued by *ahl al-ra'y*. The arrival of al-Shāfi'ī in Baghdād or Irāq was a victory for them. It is reported that al-Shāfi'ī asked al-Shaybānī's secretary to compile and copy all of al-Shaybānī's books. One day, *ahl al-ḥadīth* sought al-Shāfi'ī's help to defeat *ahl al-ra'y*'s argument. Having acquired related materials of the Ḥanafite *madhhab*, it was an easy task for al-Shāfi'ī to find mistakes and refute their argument.

<sup>58</sup> ʿAbd al-Salām Naḥrāwī, *al-Imām al-Shāfi'ī*, pp. 712-3.

In fact there were many discussions that took place between al-Shāfi'ī and al-Shaybānī on various topics.

### 9.6.1 *Munāẓarāt on Ḥadīth*

The most important discourse which took place between al-Shāfi'ī and al-Shaybānī concerns the judgement on the basis of one witness and an oath of the plaintiff. Many books quote this dispute. It also appears in *al-Umm*.<sup>59</sup> However, surprisingly, there is no such discussion recorded in *Kitāb al-Radd 'alā Muḥammad b. al-Ḥasan*.<sup>60</sup>

#### 9.6.1.1. Judgement on the Basis of a Witness Plus a Plaintiff's Oath (*Al-Qaḍā' bi al-Shāhid Wa Yamīn al-Mudda'*)<sup>61</sup>

According to al-Shaybānī, there is no such addition allowed to the Qur'ān<sup>62</sup> (*'adam jawāz al-ziyādah 'alā al-Qur'ān*). By holding this principle, al-Shaybānī rejects the testimony of one single witness and an oath of the plaintiff. He emphasizes that

<sup>59</sup> *Al-Umm*. vol. VII. pp. 3-43.

<sup>60</sup> Al-Shāfi'ī, *Kitāb al-Radd 'alā Muḥammad b. al-Ḥasan*. in the margin of *al-Umm*. vol. VII, pp. 206-333. This book is about *diyāt*, *qisās* between slave and freeman, women's bloodmoney (*'aql*), *janīn*, injuries in bodies, compensation (*arsh*) etc.

<sup>61</sup> Al-Bayhaqī, *Manāqib al-Shāfi'ī*. vol. I. pp. 115-126; al-Subkī, *Ṭabaqāt al-Shāfi'yyah al-Kubrā*. Ed. 'Abd al-Fattāh Muḥammad al-Ḥulw & Maḥmūd Muḥammad al-Tanāhī. vol. II [1963/1382] Cairo: Maṭba'at 'Īsā al-Bābī & co. pp. 122-4; Yāqūt, *Irshād al-Arīb ilā Ma'rifat al-Adīb [Dictionary of Learned Men of Yaqut]*. Ed. D.S. Margoliouth. 2nd ed., vol. VI. 6. 1931. London: Luzac & co. pp.373-5. Al-Layth b. Sa'd in his epistle to Mālik b. Anas also mentions *al-qaḍa' bi shāhid wa yamīn*. He rejects it even though Mālik claimed it was the *ijma'* of ahl al-Madīnah. see al-Ḥajawī, *al-Fikr al-Sāmī*. vol. I. pp. 370-3; Muḥammad al-Khuḍarī Bek, *Tārīkh al-Tashrīf al-Islāmī*. pp. 160-166.

<sup>62</sup> Al-Ḥajawī, *al-Fikr al-Islāmī fī Tārīkh al-Fiqh al-Islāmī*. pp. 396-7; cf. Muḥammad Ra'fat 'Uthmān, "al-Imām al-Shāfi'ī *Wāḍi' 'Ilm al-Uṣūl*", pp. 4-6.

the Qur'ān cannot be overruled by *khavar al-wāḥid*. Therefore, he condemns *ahl al-Madīnah* for narrating the above *khavar*, because he believes that holding the doctrine, will allow additional rulings over the Qur'ān. An additional ruling over the Qur'ān would mean abrogation (*naskh*),<sup>63</sup> and according to him the Qur'ān cannot be abrogated by *khavar al-wāḥid* because of the differences of strength; the former is *qat'ī al-thubūt* and the latter is *ẓannī al-thubūt*.<sup>64</sup> In other words, a *ḥadīth* cannot contradict the laws derived from the Qur'ān. If this happens, according to al-Shaybānī, that *ḥadīth* becomes invalid by itself.<sup>65</sup>

The conflict<sup>66</sup> between al-Shaybānī and al-Shāfi'ī rests on the Qur'ānic premise that a testimony is based on two men, or a man and two women.<sup>67</sup> According to al-Shaybānī, if the doctrine<sup>68</sup> of one single witness and an oath is valid, it would be an addition to what is in the Qur'ān.

The discourse on the above matter is as follows:

Al-Shāfi'ī: Is it confirmed, that an addition (*ziyādah*) to the Qur'ān based on *khavar al-wāḥid* is not allowed according to your view?

Al-Shaybānī: Yes.

<sup>63</sup> "Al-ziyādah 'alā al-naṣṣ naskh" is one of the *uṣūl* in Ḥanafite *madhhab*. See al-Hajawī, *al-Fikr al-Sāmī fī Tārīkh al-Fiqh al-Islāmī*, vol. I. pp. 354-5.

<sup>64</sup> Al-Hajawī, p. 4.

<sup>65</sup> Al-Subkī, *Ṭabaqāt al-Shāfi'iyyah al-Kubrā*, vol. II. p. 123.

<sup>66</sup> For details of arguments adduced by al-Shāfi'ī in relation to *al-Shāhid wa al-yamīn* and how he refutes al-Shaybānī's arguments see *al-khilāf fī al-Yamīn ma'a al-Shāhid* in *al-Umm*, vol. VII. pp. 7-12.

<sup>67</sup> *Al-Baqarah*: 282, "And call to witness, from among your men, two witnesses. And if two men be not [at hand] then a man and two women, of such as ye approve as witnesses.."

<sup>68</sup> *Ahl al-ḥadīth* are reported to have a *munāẓarah* with Bishr b. al-Ghiyāth al-Marīsī regarding the judgement based on one witness and an oath of plaintiff. They were able to defeat al-Marīsī's arguments by using a book on *al-yamīn ma'a al-shāhid* given by al-Shāfi'ī. Al-Marīsī is reported to have said that those arguments were familiar to him from a man of Makkah, i.e. al-Shāfi'ī. See Yāqūt, pp. 383-4.

Al-Shāfi'ī: So why is *waṣiyyah* (bequest) to the inheritor (*wārith*) disallowed by the Prophet's saying "No bequest to the inheritor (*lā waṣiyyah li al-wārith*)", whereas Allāh says "it is prescribed for you, when one of you approacheth death, if he leave wealth, that he bequeath unto parents and near relatives in kindness."<sup>69</sup>

It is reported that al-Shaybānī could not provide a satisfactory answer.<sup>70</sup>

It is reported that al-Shāfi'ī highlighted cases in which judgements made by al-Shaybānī contradicted the Qur'ān. Al-Shāfi'ī asks why al-Shaybānī accepts the testimony of a midwife (*qābilah*) where it clearly goes against the Qur'ānic text which demands two witnesses, or a man and two women. Al-Shaybānī, in defence of his judgement replied that 'Alī b. Abī Ṭālib had approved such testimony. In contrast, al-Shāfi'ī points out that such a statement was wrongly ascribed to 'Alī b. Abī Ṭālib.<sup>71</sup>

Al-Shāfi'ī claims that al-Shaybānī made a mistake by rejecting one witness along with the plaintiff's oath, because it is a *sunnah* of the Messenger of Allāh, *al-khulafā'* and a doctrine held by the judges of Madīnah.<sup>72</sup> In this case, al-Shāfi'ī criticizes al-Shaybānī because when faced with this case, he uses his opinion (*ra'y*) and at the same time rejects a *sunnah*.<sup>73</sup> Al-Shāfi'ī says that judgements in Islam are

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<sup>69</sup> *Al-Baqarah*: 180.

<sup>70</sup> Al-Ḥajawī, p. 386-7.

<sup>71</sup> Al-Bayhaqī, *Manāqib*. vol. I. pp. 124-5; in another place, al-Shāfi'ī is reported have said that "*al-shahādah wa al-yamīn*" is not a strange thing because the Prophet gave a verdict on it, as well as Abū Bakr, 'Umar, 'Alī [in Irāq] and Shurayḥ. See al-Subkī, *Ṭabaqāt*. vol. II. p. 124.

<sup>72</sup> In Bayhaqī's *Manāqib al-Shāfi'ī*, the word *al-khulafā'* is replaced with 'Alī b. Abī Ṭālib, and Madīnah with al-Ḥijāz. See al-Bayhaqī, *Manāqib*. vol. I. p. 115

<sup>73</sup> Ibn Abī Ḥātim, *Ādāb al-Shāfi'ī*. p. 166.

based on what Allāh and the Prophet have laid down. So, if someone opposes the Prophet's decision, he is in fact opposing the Qur'ān.<sup>74</sup>

Those who reject the *ḥadīth* about "*al-yamīn ma' al-shāhid*" argue that it is *mursal* and *mursal ḥadīths* are not accepted by them as a legal source. This objection is answered by al-Shāfi'ī in *al-Umm* where he says that this judgement is not based on a *mursal ḥadīth*, but derived from a *ḥadīth* related by Ibn 'Abbās and confirmed as coming from the Prophet.<sup>75</sup>

Al-Shāfi'ī quotes many cases<sup>76</sup> where the judgement made by al-Shaybānī or the Ḥanafite *madhhab* is based on a single witness. This is to show their inconsistency.

#### 9.6.2. "The Term *Ahl al-Madīnah*"

Al-Shāfi'ī had corrected the misunderstanding of al-Shaybānī regarding the term *ahl al-Madīnah*. Al-Shaybānī wrote a book<sup>77</sup> in order to refute *ahl al-Madīnah* which, in his terminology refers to Mālik. In this context, al-Shāfi'ī makes clear to al-Shaybānī that *ahl al-Madīnah* was not Malik alone; there were many other 'ulamā' and Mālik was only one of them.<sup>78</sup> Then al-Shaybānī clarifies his condemning of *ahl al-Madīnah* or Mālik. He was not condemning the place (*al-Madīnah*) or an

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<sup>74</sup> Yāqūt, *Irshād*. p. 374.

<sup>75</sup> Al-Shāfi'ī, *al-Umm*. vol. VII. p. 7.

<sup>76</sup> For details, see al-Subkī, *Ṭabaqāt al-Shāfi'iyyah al-Kubrā*. vol. II. pp. 122-4; Yāqūt, *Irshād al-Arīb ilā Ma'rifat al-Adīb*. vol. VI. p. 373.

<sup>77</sup> This book might be *kitāb al-Hujjah 'alā Ahl al-Madīnah* by al-Shaybānī.

<sup>78</sup> Ibn Abī Hātim, *Ādāb al-Shāfi'ī*. p. 111; al-Bayhaqī, *Manāqib al-Shāfi'ī*. vol. I. pp. 113-4, 121.

individual (Mālik), but he was attacking a judgement derived from "*al-shāhid wa al-yamīn*".

### 9.6.3 The Credibility of *Imāms*

Al-Shaybānī raises the question who is the more knowledgeable of two *imāms*, Abū Ḥanīfah or Mālik b. Anas? In reply, al-Shāfi'ī argues that Mālik is more knowledgeable on the Qur'ān, *sunnaḥ*, the opinions of the Prophet's Companions<sup>79</sup> and that Abū Ḥanīfah is better at *qiyās*. However, according to al-Shāfi'ī, *qiyās* must be based on those things mentioned earlier. Those who do not know *uṣūl* properly, will not be able to exercise *qiyās* correctly. This he refers to Abū Ḥanīfah in comparison to Mālik.<sup>80</sup>

There are also discussions<sup>81</sup> on *qiyās* applied to *ghaṣb*,<sup>82</sup> *du'āt* with phrases not in the Qur'ān when performing *ṣalāh*, *qasāmah*,<sup>83</sup> *ṣalāt al-khawf*,<sup>84</sup> marriage between relatives<sup>85</sup> and others.

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<sup>79</sup> Ibn Abī Ḥātim, pp. 159, 201, 164-167.

<sup>80</sup> Ibn Abī Ḥātim, p. 160.

<sup>81</sup> See *Kitāb al-Radd 'alā Muḥammad b. al-Ḥasan*, in the margin of *al-Umm*, vol. VII.

<sup>82</sup> Ibn Abī Ḥātim, p. 160-3.

<sup>83</sup> Ibn Abī Ḥātim, p. 167.

<sup>84</sup> Al-Bayhaqī, p. 128.

<sup>85</sup> Al-Bayhaqī, p. 137.

Al-Shāfi'ī says that he found many mistakes<sup>86</sup> throughout the book written by al-Shaybānī against the *ahl al-Madīnah*.<sup>87</sup>

## 9.7 Fundamental Ideas of *Jimā' al-ʿIlm*

Generally, al-Shāfi'ī's chief concern in his writings is with the role of the Prophet's *sunnah*.<sup>88</sup> Here, he pays further attention to *ḥadīth*. Before *Jimā'*, *al-Risālah* laid down guidelines on *uṣūl al-ḥadīth*.<sup>89</sup> Due to his great concern with *ḥadīth* and his contribution to it he was called the defender of the *sunnah* (*nāṣir al-sunnah*)<sup>90</sup>.

*Jimā' al-ʿIlm* contains an introduction and four chapters.<sup>91</sup> The first chapter<sup>92</sup> deals with the doctrine of those who reject *akhbār* entirely. The second<sup>93</sup> is about the doctrine of those who reject *khavar al-khāṣṣah* (*khavar al-wāḥid*). The third<sup>94</sup> deals with God's obligations (*farā'id*), such as *ṣalāt*, *ṣakāt*, *ṣiyām* and others and the last is about the nature of prohibition laid down by the Prophet.

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<sup>86</sup> It is reported that al-Shāfi'ī claimed that he found about seventy places where al-Shaybānī's books contradict the Qur'ān. See al-Bayhaqī, *Manāqib al-Shāfi'ī*, vol. I. p. 125.

<sup>87</sup> Ibn Abī Hātim, pp. 165-7

<sup>88</sup> Abdul Hamīd Othmān, *Shāfi'ī and the interpretation of the role of the Qur'ān and the Ḥadīth*, p. 7.

<sup>89</sup> In his *Risālah*, al-Shāfi'ī laid down the formula as to how to accept the *khavar* or *ḥadīth*, such as the narrator must be reliable, just and its *sanad* must not be broken.

<sup>90</sup> Ibn Abī Hātim al-Rāzī, *Ādāb al-Shāfi'ī*, pp. 170-82; al-Bayhaqī, *Manāqib al-Shāfi'ī*, pp. 24-26; al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, vol. II. p. 68.

<sup>91</sup> Aḥmad Muḥammad Shākir, the editor of *Jimā'*, added another chapter-heading on the characteristics of the Prophet's prohibition (*Ṣifat Nahy al-Nabī*). He did so to give continuity to the chapter before it.

<sup>92</sup> *Jimā' al-ʿIlm*, pp. 13-46.

<sup>93</sup> *Ibid.*, pp. 46-102.

<sup>94</sup> *Ibid.*, pp. 103-124.



### 9.7.1 The Authority of the *Sunnah* of the Prophet

In the first two chapters, al-Shāfi'ī endeavours to put forward the *akhbār* of the Prophet in its rightful position as a valid source of Islamic jurisprudence. He adduces proofs from the Qur'ān against those who repudiate the authority of *khavar*, by explaining that Muslims have to accept the *khavar* of the Prophet especially *khavar* which contains legal rulings.

In *Jimā'*, he produces pieces of evidence from the Qur'ān. Among them are,

"it is He who has sent amongst the unlettered (*umiyyīn*) an apostle from among themselves to rehearse (*yatlū*) to them His signs, to sanctify them and to instruct them in Scripture (*al-Kitāb*) and *al-Hikmah*."<sup>95</sup>

"and recite what is rehearsed (*yutlā*) to you in your home, of the signs of God and *al-Hikmah*, for God understands the finest mysteries and is well acquainted (with them)".<sup>96</sup>

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<sup>95</sup> *Al-Jum'ah*: 2

<sup>96</sup> *Al-Ahzāb*: 3.



From these two Qur'ānic verses cited, al-Shāfi'ī in the authority of *ahl al-Qur'ān*<sup>97</sup> before him interprets *al-Ḥikmah* which comes together with *al-Kitāb* as the *sunnah* of the Prophet.<sup>98</sup>

He also cites other verses of the Qur'ān. Among others are,

"But no, by thy Lord, they can have no (real) faith until they make thee judge in all disputes between them, and find in their souls no resistance against thy decisions, but accept them with the fullest conviction".<sup>99</sup>

"He who obeys the Apostle, obeys God".<sup>100</sup>

"Then, let those beware who withstand the Apostle's order, lest some trial befall them, or a grievous penalty be inflicted on them".<sup>101</sup>

"So take what the Apostle assigns to you, and deny yourselves that which he withholds from you".<sup>102</sup>

<sup>97</sup> Al-Shāfi'ī was not the first one who interprets *ḥikmah* which is mentioned together with *al-Kitāb* as the *sunnah* of the Prophet. For, he himself declares that he heard such an interpretation from the authorities of the Qur'ān. In reference to Ṭabarī's *Tafsīr* of Qur'ān, Q 33: 34 *Ayāt Allāh* is interpreted as referring to the Qur'ān and *al-ḥikmah* as the *sunnah* of the Prophet. The ultimate authority of this *isnād* goes back to Qatādah (d. 117/118 A.H.). Therefore, we could say that al-Shāfi'ī's interpretation in connection with *ḥikmah* as the *sunnah* went back to one of the scholars of the Qur'ān, Qatādah.

The *isnād* of this *tafsīr* (*al-Aḥzāb*: 34) as follows: Bishr - Yazīd - Sa'īd - Qatādah. ( *al-Ṭabarī*, vol. 22, p. 9). See also Imtiaz Ahmad, *The Significance of Sunna*, p. 110. Al-Shāfi'ī also produces as his *sanad* al-Ḥasan, Qatādah and Yahyā b. Abī Kathīr. He also forwards his *sanad* from al-Miqdām b. Ma'dī Karib from the Prophet that he said: "Truly! I was given *al-Kitāb* and its equivalent together. Truly I was given the Qur'ān and its equivalent. It is doubted that a hungry man lying on his couch saying: It is only upon you the Qur'ān. Whatever you find *ḥalāl* in it, you have to declare it *ḥalāl*. And whatever you find *ḥarām* in-it, you have to declare it *ḥarām*. Truly, a donkey is not permitted for you.....". [ See al-Suyūṭī, Jalāl al-Dīn, *Miftah al-Jannah fī al-Ihtijāj bi al-Sunnah*, pp. 20-1.]

<sup>98</sup> Al-Shāfi'ī, *Jimā' al-ʿIlm*, pp. 17-19; *al-Risālah*, paras. 97, 254-57, 305-7. Cf. al-Suyūṭī, Jalāl al-Dīn, *Miftah al-Jannah fī al-Ihtijāj bi al-Sunnah*, pp. 20-1.

<sup>99</sup> *Al-Nisā'*: 65.

<sup>100</sup> *Al-Nisā'*: 80.

<sup>101</sup> *Al-Nūr*: 63.

<sup>102</sup> *Al-Hashr*: 7.

These four verses, argues al-Shāfi'ī clearly state that Allāh imposes upon Muslims to obey and follow (*ittibā'*) the Prophet<sup>103</sup> and his order.<sup>104</sup> Muslims have to follow and obey whatever the Prophet declared as commandment (*amr*) or prohibition (*nahy*).<sup>105</sup> Furthermore, he argues that the only way to implement the obligation laid down by Allāh concerning His Prophet is the *khavar* (*ḥadīth*) of the Apostle.<sup>106</sup>

He argues that the general (*ʿāmm*), particular (*khāṣṣ*), abrogated (*mansūkh*) and abrogating (*nāsikh*) passages of the Qur'ān are best expounded by the *sunnah* or *ḥadīth* of the Prophet. In relation to *nāsikh* and *mansūkh*, he gives an example of the crucial role of *ḥadīth*. The question is whether an *āyah* on *farā'id* (Islamic law of succession/inheritance) had abrogated the bequest to parents or vice versa.<sup>107</sup> By accepting the *sunnah* or *khavar*, this question is answered, i.e. it is the *āyah* of *farā'id* abrogated the bequest to parents and not the *āyah* of bequest which abrogated the *farā'id*. Al-Shāfi'ī raises the question of how it can be known that the *farā'id*'s verses have abrogated the verse about bequest to parents, if we do not accept *khavar* from the Prophet.

To conclude, his putting forward the authority and validity of *khavar al-wāḥid* in the eyes of jurists and *ahl al-kalām* is the great contribution of al-Imām al-Shāfi'ī to the *ḥadīth*.

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<sup>103</sup> *Jimā'*, p. 19.

<sup>104</sup> *Jimā'*, p. 21.

<sup>105</sup> *Jimā'*, p. 21.

<sup>106</sup> *Jimā'*, pp. 21-2.

<sup>107</sup> *Jimā' al-ʿIlm*, pp. 22-23.

### 9.7.2 *Ijmā'*

Al-Shāfi'ī also pays attention to *ijmā'*. What is the nature of *ijmā'* and its feasibility? Does the consensus of any locality constitute a decisive proof and authority?

According to al-Shāfi'ī, the real *ijmā'* is what the entire *ummah* have reached a consensus upon which is binding upon all Muslims, not the *ijmā'* of certain regions such as *ijmā' ahl al-Madīnah*.

Al-Shāfi'ī claims that 'the real *ijmā'*' only happens on basic obligations such *ṣalāt*, *zakāt*, *ḥajj*, prohibition of theft, adultery/fornification, *ribā* and others.

As far as *ijmā' ahl al-Madīnah* is concerned, al-Shāfi'ī in *Jimā'* and elsewhere such as *Ikhtilāf Mālik wa al-Shāfi'ī* forwards his arguments in order to establish that the *ijmā' ahl al-Madīnah* does not bind other Muslims, because it is only a consensus agreed by certain 'ulamā' in Madīnah. In this connection, it is worth noting what is said by Ibn Khaldūn in his *al-Muqaddimah*<sup>108</sup> and later authorities.<sup>109</sup> They attempt to correct al-Shāfi'ī's misunderstanding of the concept of *ijmā' ahl al-Madīnah*. For them, *ijmā' ahl al-Madīnah* does not bind the entire *ummah*. But, other regions of Muslims may choose to follow what was agreed by the scholars of Madīnah.

<sup>108</sup> Ibn Khaldūn, *al-Muqaddimah*, p. 447.

<sup>109</sup> For instance, 'Umar 'Abdullah Fārūq, "Mālik's Concept of 'Amal in the Light of Mālikī Theory". p. 348.

### 9.7.3 *Ijtihād*

Concerning *ijtihād* and *qiyās*, al-Shāfi'ī mentions several things that are required of a *mujtahid*, namely the knowledge of the Qur'ān, *sunnah*, *ijmā'* and *qiyās*, which he calls *khavar lāzim*<sup>110</sup> (binding report). No one is allowed to practise *ijtihād* or to use *qiyās* unless he is knowledgeable. Otherwise, he would be acting arbitrarily.

### 9.7.4 Obligations Imposed by Allāh

As far as the obligations imposed by Allāh are concerned, al-Shāfi'ī divides them into two categories. The first is when the Qur'ān explains the details of certain obligations, so it does not need further interpretation or reports from the Prophet to explain it. Second, Allāh laid down certain obligations in the Qur'ān in general terms and the Prophet will explain what is intended by those obligations in details.

As far as the second category is concerned, *ṣalāt*, *zakāt*, *ḥajj* and others were imposed in the Qur'ān in general terms. Then, it is the task of the Prophet to explain them in detail such as the number of prayers, *raka'āt*, *rukū'*, *sujūd*; the way of performing *ḥajj*; on which property *zakāt* is required and others.

### 9.7.5 The Nature of the Prophet's Prohibition

The basis of prohibition made by the Prophet is that everything the Prophet forbids is unlawful (*ḥarām*) unless there is an indication to lessen the degree of prohibition from completely *ḥarām*, or whether he intended by it prohibition in certain

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<sup>110</sup> *Jimā' al-'Ilm.* p. 43.

things, apart from others, or intended it to be avoided; or he may have been giving instruction on good behaviour and choice.

The degree of prohibition from *ḥarām* to others would be changed on the basis of indication derived from the Prophet or the consensus of Muslims. Al-Shāfi'ī illustrates these prohibitions as follows.

#### 9.7.5.1 Prohibition Which is *Ḥarām*

The Prophet prohibited the exchanging of gold with silver, gold with gold except in the one contract, two sales in one contract, *bay' al-gharar*, the marriage of *al-shighār* and *mufāh*.

#### 9.7.5.2 Prohibition in Certain Circumstances and Not Others

This kind of prohibition is solely indicative from the *sunnah* of the Prophet that he prohibited in certain circumstances and not others, for instance making a proposal of marriage to a woman who has been proposed to earlier by another (*al-khiṭbah 'alā al-khiṭbah*). There is a *ḥadīth* which clearly prohibits Muslims from making a proposal of marriage to a woman who has been proposed to earlier by another. The *ḥadīth* is as follows, "let none of you make an engagement of marriage in competition with his brother's proposal".

The literal meaning is that *al-khiṭbah 'alā al-khiṭbah* is prohibited as *ḥarām*, the first degree of prohibition. However, according to al-Shāfi'ī, the degree of prohibition is changed for there is a *sunnah* of the Prophet which indicates otherwise.

From the *ḥadīth* of Umm Salamah, it is derived that if a woman has received a proposal of marriage, and has neither agreed to nor rejected the first proposal, it is allowed to others other than the first man to make a proposal to her. For, in the case of Umm Salamah where two Companions, Abū Sufyān and Abū Jahm proposed her, she neither accepted nor rejected them. The Prophet, however, suggested that she should marry Usāmah. From this event, it is clear that the prohibition as stated in the *ḥadīth* is intended for certain circumstances and not others.

### 9.8 The Significance of the *Jimā' al-ʿIlm*

Unlike al-Shāfiʿī's encyclopaedic and pioneering corpuses, *al-Umm* and *al-Risālah*, *Jimā' al-ʿIlm* does not share their reputation. The fact that only a few scholars have had recourse to this work either by citation or edition bears out the truth of this assertion. However, this does not mean that *Jimā' al-ʿIlm* does not have any significance for Islam in general, or for Islamic jurisprudence in particular. The significance of this work can be identified in the following categories.

#### 9.8.1 *Uṣūl al-fiqh*

Most writers<sup>111</sup> categorise *Jimā' al-ʿIlm* as being about the science of *uṣūl al-fiqh*. Al-Shāfiʿī's writings in *uṣūl al-fiqh* can be listed as follows: *al-Risālah*, *kitāb Ibtāl al-Istiḥsān*, *Jimā' al-ʿIlm*, *kitāb Ikhtilāf Mālik wa al-Shāfiʿī* and others.<sup>112</sup>

<sup>111</sup> Al-Bayhaqī, *Manāqib al-Shāfiʿī*, vol. I, p. 246; Abū Zahrah, *al-Shāfiʿī*, p. 180.

<sup>112</sup> Aḥmad Muḥammad Shākir, *Introduction to al-Risālah*, p. 13 citing al-Zarkashī, Badr al-Dīn, *al-Baḥr al-Muḥīṭ fī al-Uṣūl*, that al-Shāfiʿī was the first scholar who wrote on *uṣūl al-fiqh* whose books or treatises are *al-Risālah*, *kitāb Aḥkām al-Qurʾān*, *Ikhtilāf al-Ḥadīth*, *Ibtāl al-Istiḥsān*, *Jimā' al-ʿIlm* and *kitāb al-Qiyās*.

In the *Jimāʿ*, al-Shāfiʿī demonstrates the importance of *sunnah*/*ḥadīth* as a source of Islamic jurisprudence. The authoritativeness of the *sunnah* was an issue to his interlocutors. The emergence of those who rejected *ḥadīth* had a great impact on al-Shāfiʿī's thinking. It explains why al-Shāfiʿī in most of his writings deals with the authoritativeness and the validity of *khābar al-wāḥid* particularly. Not only in the *Jimāʿ* has he done this, but also in *al-Risālah* and *Ikhtilāf al-Ḥadīth*.

He also pays attention to *qiyās*, *ijmāʿ*, *ikhtilāf* and *ijtihād* as authoritative in addition to *sunnah*.

In retrospect, it could be said that *Jimāʿ al-ʿIlm* is a summary of *al-Risālah* which is considered the first book to treat *uṣūl al-fiqh* as an independent topic. In other words, at a certain point in *al-Risālah*, al-Shāfiʿī deals at length with ideas in which he deals briefly in *Jimāʿ*, and the other way round.

## CHAPTER TEN: AN ANNOTATED TRANSLATION OF *JIMĀ' AL-ILM*

This chapter will provide a full and complete translation of al-Shāfi'ī's work, *Jimā' al-Ilm*. The translation aims to help readers especially those who are not conversant with the Arabic language to understand the significance of the work.

It is noteworthy that in rendering the Arabic text into English, the author has made use of the different texts of *Jimā' al-Ilm* that are available to him. For ease of reading and to make the text systematic, the author follows Aḥmad Muḥammad Shākir's paragraph numbering.

In order to draw attention to the significance of the work, the author has attempted to give cross-references to al-Shāfi'ī's other works, mainly *al-Risālah*, *Ikhtilāf al-Ḥadīth*, *Ikhtilāf Mālik wa al-Shāfi'ī* and others. Having done this, it will be appreciated how al-Shāfi'ī, in the different works tried to develop more or less the same ideas.



*KITĀB JIMĀ' AL-ʿILM*

1. Al-Rabīʿ b. Sulaymān<sup>1</sup> informed us,<sup>2</sup> saying: Muḥammad b. Idrīs al-Shāfiʿī informed us; he said: I never heard anyone-to whom the people ascribed knowledge, or who ascribed knowledge to himself-contradicting the fact that Allāh has obliged [us] to adhere to the commandment of the Messenger of Allāh and to submit to his ruling (*ḥukm*), and that Allāh did not assign to anyone after him anything other than adherence to him; and that no statement is ever binding except on the basis of the Book of Allāh, or the *sunnah* of His Prophet may Allāh bless him and grant him peace; any (thing) other than the Book of Allāh and the *sunnah* is subordinate to both of them; and that the demand Allāh imposed upon us and upon our successors and upon our predecessors to accept reports (*ḥabār*) from the Messenger of Allāh is one and the same.<sup>3</sup> Nobody disagrees that it is obligatory (*farḍ*) and incumbent (*wājib*) on all to accept *ḥabār* from the Messenger of Allāh may Allāh bless him and grant him peace, except a group whose doctrine I shall describe-if Allāh, the High wills.

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<sup>1</sup> Al-Rabīʿ b. Sulaymān b. ʿAbd al-Jabbār al-Murādī al-Muʾadhdhin (184-270H), al-Suyūṭī, *Tadhkirat al-Ḥuffāz*, p. 148.

<sup>2</sup> According to Aḥmad Muḥammad Shākir in his *Introduction to Jimāʿ al-ʿIlm*, that the one who narrated this work from al-Rabīʿ was Abū al-ʿAbbās al-Aṣamm, Muḥammad b. Yaʿkūb b. Yūsuf b. Maʿqal b. Sinān al-Naysābūrī (247-346H). For Abū al-ʿAbbās, see al-Dhahabī, *Tadhkirat al-Ḥuffāz*, vol. III., p. 73-5.

<sup>3</sup> Cf. al-Shāfiʿī, *Aḥkām al-Qurʾān*. (Compiled Abū Bakr b. al-Ḥusayn al-Bayhaqī and intro. Muḥammad Zāhid al-Ḥasan al-Khawtharī) 1980. Beirut: Dār al-Kutub al-ʿIlmiyyah, vol. I. pp. 27-31.

2. Muḥammad b. Idrīs al-Shāfi'ī said: The *ahl al-kalām*<sup>4</sup> are widely divided about validating (*tathbīt*) the *khābar* from the Messenger of Allāh, and others of those whom the 'āmmah associate with *fiqh* are also divided about it.

Some of them have given much weight to *taqlīd*<sup>5</sup> and have paid little attention to *nazar* (thinking), [they have been frequently] careless and have hurried to [gain] the leadership [of others].

3. I will provide you with some examples for each group I know that will indicate other views I have not mentioned-if Allāh, the High wills.

#### THE ACCOUNT OF THE DOCTRINE OF THE GROUP WHICH REJECT THE *AKHBĀR* ENTIRELY

4. Al-Shāfi'ī may Allāh the High have mercy on him said: Someone who is credited with knowledge of the doctrine of his colleagues said to me: "You are an Arab, and the Qur'ān has been revealed in the tongue<sup>6</sup> of those of whom you are [a part], and you are more knowledgeable (*adrā*) in memorizing the Qur'ān.

In it, there are injunctions of Allāh which He has revealed. If anyone to whom the Qur'ān may have become confusing has doubted concerning one single letter- you would call him to repent, and if he does not repent you will kill him.<sup>7</sup>

<sup>4</sup> This term (*ahl al-kalām*) appears two times in *Ikhtilāf al-Ḥadīth*. pp. 43, 53.

<sup>5</sup> Cf. *al-Risālah*. para. 136.

<sup>6</sup> Al-Qur'ān, according to al-Shāfi'ī is absolutely Arabic language. Thus, he rejects the opinion of those who hold that the Qur'ān contains both Arabic and non Arabic ('*ajam*') languages. See *al-Risālah*. paras. 127, 131-187.

<sup>7</sup> *Al-Risālah*. para. 1261.

And Allāh, the Exalted says about the Qur'ān:

"...(it is) an explanation for all matters".<sup>8</sup>

Then, how it is possible for yourself or for anyone, concerning anything which Allāh has laid down, to say at one time that the obligation in it is general; at another time that the obligation in it is particular; at another that the order is obligatory; at another to say that the order has an indication (*dilālah*) in it or, if he wishes, is optional<sup>9</sup>?

5. Frequently you draw this distinction that a *ḥadīth* you relate from one man from another from another, or two *ḥadīths* or three until you reach the Messenger of Allāh may Allāh bless him and grant him peace. However I have found that you and those who followed your doctrine do not exonerate anyone whom you met, nor anyone whom I have met of those whom you have met, and to whom you give precedence in truthfulness and memorising [of *ḥadīth*] from error and forgetfulness and making a mistake in his report; rather I have found you saying of more than one of them, "so and so has made a mistake in such and such a *ḥadīth*, and so and so has made a mistake in such and such a *ḥadīth*. I have also found you saying, if a man says of a *ḥadīth* which only a few people know (*min ʿilm al-khāṣṣah*) and which you have used to declare something lawful or unlawful: "The Messenger of Allāh did not say this". Either you are in error or those who related the *ḥadīth* to you are in error". You do not call him to repent. You said no more to him than "How shameful is what you say".

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<sup>8</sup> *Al-Nahl*: 89.

<sup>9</sup> *Ikhtilāf al-Ḥadīth*. pp. 54--7; *al-Risālah*. paras. 183, 189-207, 214, 235, 425-466, 558. 624-654.

6. Is it then possible to make a distinction between any of the laws of the Qur'ān (*aḥkām al-Qur'ān*)<sup>10</sup>, when its outward appearance is one and the same to those who hear it, on the basis of the *khavar* of those who are as you have described? Do you treat their *khavar* as you would the Book of Allāh, so that you give and withhold on their basis<sup>11</sup>?

7. He said: Then I replied: Actually we give only on the basis of certainty (*iḥāṭah*),<sup>12</sup> and on the report of truthful men (*khavar al-ṣādiq*), and on the basis of *qiyās* (analogy). The justifications of these [three] according to us differ. Even though we give it according to all of them, some of them are more valid than others.

8. He said: Such as?

9. I said: I give [legal judgement] on the basis of a man's admission, on the basis of evidence, on the basis of his refusal to swear an oath (*yamīn*) and on the basis of his opponent's oath. Affirmation (*iqrār*) is stronger than proof, and proof is stronger than refusal to swear and than an opponent's oath. And even though we give [legal judgement] on the same level based on these things, the justifications for them are different.<sup>13</sup>

10. He said: When you take your stand on accepting their *khavar*, while affecting them are the matters which you have mentioned, who ordered you to accept their reports and what is your proof (*ḥujjah*) against those who reject them (their *khavar*)?

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<sup>10</sup> *Ikhtilāf al-Ḥadīth*. p. 54.

<sup>11</sup> *Ḥadīth* specifies the Qur'ān, see *al-Risālah*. paras. 214-235, 466- 485, 1610-1621.

<sup>12</sup> For definition of certainty, see this *Jimā' al-ʿIlm* para. 169.

<sup>13</sup> *Al-Risālah*. para. 1821.

11. Then he (the opponent) continued: I do not accept any of them (i.e. *khavar*) for there is the possibility of mistake (*wahm*) in the reporters. I do not accept (anything) except what I call Allāh to bear witness, just as I acknowledge His Book of which no one can doubt a single letter. Is it then admissible that anything should take the place of knowledge (certainty) when it is not?

12. I said to him: Whoever knows the language in which the Book of Allāh and the *ahkām* of Allāh [have been revealed], [surely] his knowledge of both will lead him to the acceptance of the *akhbār* of those who are truthful from the Messenger of Allāh, *khavar al-khāṣṣah* and *khavar al-‘āmmah*. [And his knowledge of both will lead him] to distinguish those of the laws of Allāh for whose distinction the Messenger of Allāh has given evidence.<sup>14</sup> In that way, he would realize the place of the Messenger of Allāh, since you have not seen him.

13. He said: Yes.

14. I said: You have rejected *khavar* since you believe in what you are saying!

15. He said: Could you give me an example of this, from matters in which proof can be supporting [for you] about the acceptance of the *khavar*? Then, if you can show it, it will illustrate your argument more clearly and establish it more firmly against those who contradict you, and will be more acceptable to [the mind of] those who abandon their opinion for yours.

16. I replied: If you follow the path of fairness, it will be clear that in some of what you have said you base your opinion upon grounds which it is necessary for you to

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<sup>14</sup> *Al-Risālah*. paras. 53-9, 269-311.

abandon, and you know that you have remained too long in your negligence of matters of your religion of which you should not be negligent.

17. He said: So, please mention anything if you can produce it?

18. I said: Allāh the Exalted says:

"It is He who has sent amongst the unlettered an apostle from among themselves to rehearse to them His signs (*āyātih*), to sanctify them and to instruct them the Book (*al-Kitāb*) and Wisdom (*al-Ḥikmah*)".<sup>15</sup>

19. He said: We already know that the Book is the *Kitāb* of Allāh, but what is *al-Ḥikmah*?

20. I replied: The *sunnah* of the Messenger of Allāh may Allāh bless him and grant him peace.<sup>16</sup>

21. He said: Is it not possible [that it means] that he [the Prophet] is teaching/instructing them *al-kitāb* generally, and (teaching them) *al-ḥikmah* particularly, and that *al-ḥikmah* means the *aḥkām* of the Qur'ān?

22. I replied : You mean that he [the Apostle] expounds to them from Allāh, the Exalted as he explained to them all of the basic obligations (*farā'iḍ*), such as *ṣalāt*, *zakāt*, *ḥajj* (pilgrimage) and others, so that Allāh has expounded some of His obligations through His *Kitāb* (Book), and has explained their details through the words of His Prophet may Allāh bless him and grant him peace?

23. He said: That is possible.

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<sup>15</sup> *Al-Jum'ah*: 2. Cf. al-Ṭabarī, *Tafsīr al-Ṭabarī*: vol. 28, p. 94 that *ḥikmah* is the *sunnah* of the Prophet.

<sup>16</sup> *Al-Risālah*. paras. 97, 245-257, 305-7.

24. I said: If you accept this opinion, then the question is the same as the one before it, i.e. you will reach knowledge only through a *khavar* from the Messenger of Allāh may Allāh bless and grant him peace.

25. He said: And if I accept the view that it is a repetition of the words? [i.e. *Hikmah* and *Kitāb* are the same].

26. I said: Which one of them is it best to follow: since *al-kitāb* and *al-hikmah* have both been mentioned [together]: are they two things or just one?

27. He said: It is possible that they may be as you have described; i.e. *Kitāb* and *Sunnah*; so that they are two [separate] things, but it may be that they are one thing.

28. I said: The more obvious of the two things is the better. In the Qur'ān there is evidence of what we have said and a contradiction of your belief.

29. He said: And where is it?

30. I said: The word of Allāh, the Exalted:

"...and remember what is rehearsed to you in your homes, of the signs of Allāh and the *Hikmah*, for Allāh is Subtle and Aware".<sup>17</sup>

So, He (Allāh) informed [us] that two things were rehearsed in their houses.

31. He said: This Qur'ān is recited, but how can *al-hikmah* be recited?

32. I said: The meaning of *tilāwah* (recitation) is that the Qur'ān and the *Sunnah* are uttered [just as it (*al-hikmah*) is uttered].

33. He said: This is better evidence than the first that the *Hikmah* is not the Qur'ān.

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<sup>17</sup> *Al-Ahzāb*: 34. Cf. *Tafsīr al-Tabarī*, vol. 22, p. 9.

34. And I said: Allāh has enjoined us to follow His Prophet (*ittibāʿ Nabīyyih*) may Allāh bless and grant him peace.<sup>18</sup>

35. He said: Where?

36. I said: Allāh, the Exalted says:

"But no, by thy Lord, they can have no [real] faith until they make thee judge in all disputes between them, and find in their souls no resistance against thy decisions, but accept them with the fullest conviction".<sup>19</sup>

37. And (Allāh) the Exalted says:

"He who obeys the Apostle, obeys Allāh".<sup>20</sup>

38. And Allāh says:

"Then, let those beware who withstand the Apostle's order, lest some trial befall them, or a grievous penalty be inflicted on them".<sup>21</sup>

39. He said: There is nothing better for us to state concerning the *Hikmah* than that (*al-Hikmah*) is the *Sunnah* of the Messenger of Allāh may Allāh bless him and grant him peace. If some of what our colleagues have claimed was (true) that Allāh has enjoined submission to the rule (*ḥukm*) of the Apostle of Allāh may Allāh bless him and grant him peace, whereas if the *Hikmah* is some of what He has revealed, those who did not accept (that *Hikmah* meant the *sunnah*) would still have to be associated

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<sup>18</sup> *Al-Risālah*, pp. 73-8; *Ikhtilāf al-Ḥadīth*, p. 61.

<sup>19</sup> *Al-Nisāʾ*: 65.

<sup>20</sup> *Al-Nisāʾ*: 80.

<sup>21</sup> *Al-Nūr*: 64.



with submission to the rule (*hukm*) of the Apostle of Allāh may Allāh bless him and grant him peace.

40. I said: Allāh has imposed upon us to follow his order, therefore He said:

"So take what the Apostle assigns to you, and deny yourselves that which he withholds from you".<sup>22</sup>

41. He said: It is obvious in the revelation that there is an obligation upon us that we (should) take what the Messenger of Allāh commands us, and deny ourselves what he prohibits us.

42. He said: I said: And the obligation upon us and upon those who came before us and those who will come after us is one [and the same]?

43. He said: Yes.

44. Then I said: If it is an obligation upon us to follow the Apostle's order, then do we know certainly that Allāh, whenever He imposes something upon us, has shown us the way to fulfil His obligation?

45. He said: Yes.

46. I said: Do you find the way to realize Allāh's obligation about following the orders of the Apostle of Allāh, or anyone before you or after you who has not seen the Apostle, except through reports (*khavar*) from the Apostle may Allāh bless him and grant him peace?

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<sup>22</sup> *Al-Hashr*: 7.

47. The fact that I can only achieve this through a *khavar* shows that Allāh has required me to accept from the Apostle of Allāh may Allāh bless him and grant him peace.

48. He said: And I also said to him: This is binding upon you in relation to abrogating and abrogated passages of the Qur'ān.<sup>23</sup>

49. He said: Please mention something about that.

50. I said: Allāh, the High says,

" It is prescribed, when death approaches any of you, if he leave any goods, that he make a bequest to parents and kin".<sup>24</sup>

51. And (Allāh) says in the matter of inheritance (*farā'id*):

" And to his (the deceased) parents, a sixth share of the inheritance, if the deceased left children, and if he have no child and the parents are the (only) heirs, then to his mother appertaineth the third; if the deceased have brothers (or sisters), to his mother appertaineth the sixth".<sup>25</sup>

52. As a result, we have claimed, on the basis of the *khavar* from the Apostle may Allāh bless him and grant him peace that the verse[s] of inheritance (*āyat al-farā'id*) has abrogated the judgement of bequests (*waṣiyyah*) to parents and kin.<sup>26</sup> Now, If we

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<sup>23</sup> *Sunnah* indicates the abrogated and abrogating passages of the Qur'ān. See *al-Risālah*. paras. 241-2, 376-386; *Ikhtilāf al-Ḥadīth*. p. 64.

<sup>24</sup> *Al-Baqarah*: 180.

<sup>25</sup> *Al-Nisā'*: 11.

<sup>26</sup> It is similar to the case of *al-mash* (wiping the boots). It is claimed that *mash* was abrogated by the Qur'ān (*wuḍū'*) arguing that the imposition of *mash* was before the imposition of *wuḍū'* (*al-Mā'idah*). However, according to al-Shāfi'ī, this view cannot be accepted because there is no such narration that the Prophet did not *mash* after the imposition of *wuḍū'*. See *Ikhtilāf al-Ḥadīth*. pp. 59-61.

were among those who do not accept the *khavar* and someone said: "The bequest has invalidated the *farā'iḳ*", would we have proof against him except through the *khavar* from the Messenger of Allāh may Allāh bless him and grant him peace?

53. He said: This is similar to the *Kitāb* and the *Hikmah*. And the proof in your favour is established that it is incumbent upon us to accept reports (*khavar*) from the Apostle may Allāh bless and grant him peace.

And indeed I have come to the conclusion that the acceptance of reports is compulsory for every Muslim,<sup>27</sup> according to what you have mentioned and what is equivalent to its meaning in the Book of Allāh.

No pride prevents me from showing that I have moved from what I used to think to another opinion, since the proof is clear. Rather I believe that it is my duty to revert from what I used to think to what I now see to be the truth.

54. But what about how you make what is general in the Qur'ān sometimes general, and sometimes particular?

55. I said to him: The language of the Arabs is comprehensive. Arabs may utter something general which they intend to be particular, and this is clear in their expression (*lafz*).<sup>28</sup> And I do not decide such through any *khavar*, other than a *khavar lāzim* (binding reports). Thus a thing has been revealed in the Qur'ān and been expounded at one time in the Qur'ān, and at another in the *Sunnah*.<sup>29</sup>

56. He said: Then, please mention something of this?

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<sup>27</sup> *Al-Risālah*. paras. 214-219, 393-415,

<sup>28</sup> *Al-Risālah*. paras. 173-8.

<sup>29</sup> General ('*āmm*) and particular (*khāṣṣ*) terms, *Ikhtilāf al-Hadīth*. pp. 59, 65.

57. I said: Allāh, the Exalted says:

"Allāh is the creator of all things".<sup>30</sup>

This is produced in speech as general and what is intended is general.<sup>31</sup>

58. And He (Allāh) says:

"(O mankind !) We created you from a single (pair), of a male and a female, and made you into nations and tribes, that ye may know each other. The most honoured of you in the sight of Allāh is (he who is) the most righteous of you".<sup>32</sup>

Every soul is created from a male and a female. This is general and by it a general meaning is intended.

59. [However], within it there is particularity, for (Allāh) says:

"The most honoured of you in the sight of Allāh is (he who is) the most righteous".<sup>33</sup>

However, righteousness (*taqwā*) and its opposite can be predicated of only those who have reached adulthood and are not mentally handicapped.<sup>34</sup>

60. And (Allāh) says:

"O men! Here is a parable set forth! Listen to it. Those on whom, besides God, ye call, cannot create (even) a fly, even if they were all to meet together for the purpose".<sup>35</sup>

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<sup>30</sup> *Al-Zumar*: 62. Cf. *al-Risālah*. para. 179.

<sup>31</sup> *Al-Risālah*. paras. 179-180.

<sup>32</sup> *Al-Hujurāt*: 13. Cf. *al-Risālah*. para. 188.

<sup>33</sup> *Al-Hujurāt*: 13. Cf. *al-Risālah*. paras. 193-6.

<sup>34</sup> *Al-Risālah*. paras. 188-196.

<sup>35</sup> *Al-Hajj*: 73. Cf. *al-Risālah*. para. 202.

It is certain that not all people in the time of the Apostle may Allāh bless him and grant him peace used to call on something (else) besides God, because among them there were believers. So, the verbal form of the speech is general, but only those who were like this were intended.<sup>36</sup>

61. And (Allāh) says:

"And ask them about the town standing close by the sea when they transgressed on the Sabbath".<sup>37</sup>

[This communication] shows that the transgressors in (the matter of the Sabbath) are its inhabitants, not the town (*qaryah*).

62. And I mentioned to him part of what which I wrote in my book<sup>38</sup> [i.e. *al-Risālah*].

63. Then he said : It is all exactly as you have said, but explain to me the general which is not found in the Book of Allāh to be intended to be particular?

64. I said : Allāh has imposed the *ṣalāt*. Do you not find it to be [obligatory] on people in general?

65. He said: Yes.

66. I said: And do you not find menstruating women to be excluded from it?

67. He said: Yes.

68. And I said: And do you not find [the obligation] of *ḥajj* on wealth to be general but find some type of wealth to be excluded from it?

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<sup>36</sup> *Al-Risālah*, paras. 203-3.

<sup>37</sup> *Al-A'raf*, 163. Cf. *al-Risālah*, para. 208.

<sup>38</sup> Al-Shāfi'ī refers to *kitāb*/*kitāb* in this *Jimā' al-ʿIlm* para. 103, as well as in *al-Risālah* as he called it *al-kitāb*, *kitāb* or *kitābunā*, paras. 96, 418, 420, 573, 625, 709, 954.

69. He said: Yes.

70. I said : And do you not find that the bequest to parents is abrogated by the verses of inheritance?

71. He said: Yes.

72. I said: And (do you not find) the obligation of inheritance to fathers and mothers expressed in general terms, though Muslims do not allow an unbeliever to inherit from a Muslim, nor a slave from a freeman, nor a murderer from his victim, by the *sunnah*?<sup>39</sup>

73. He said: Yes. We accept some of this.

74. I said: What has showed you this?

75. He said: The *sunnah*, because there is no Qur'ānic text concerning this matter.

76. I said: It is clear from the *ahkām* of Allāh in His Book that Allāh (made) it obligatory to obey His Messenger, as is also the position which Allāh has given him as the clarifier (*ibānah*) what Allāh has revealed in terms of whether it is particular or general, abrogating or abrogated ?

77. He said: Yes, I maintained the opposite of this until the error of those who embrace that doctrine became clear to me. Concerning this matter, people have followed two *madhhabs*: One of these groups does not accept any *khābar*, and that the explanation is in the Book of Allāh.

78. I said: What does that lead to?

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<sup>39</sup> Al-Shāfi'ī, *Tarīḥ al-Musnad al-Shāfi'ī*, vol. II, p. 109; *al-Risālah*, para. 216, 124, 472, 470-9.

79. He said: This leads to terrible things. They say that whoever performs anything that could be called '*salāt*' and gives the minimum of that which is given the name '*zakāt*' has performed what is required of him. There is no limit concerning that, even if he prays only two *raka'ahs* each day, or every few days! And they say there is no obligation upon anyone about anything which is not in the Book of Allāh.

80. Another [group] said: A *khavar* is acceptable about anything mentioned in the Qur'ān. They accept something close to their words concerning what is not mentioned in the Qur'ān, and they fall into the same error as the first group, or something close to it. They come to accept a *khavar* after having rejected it and fail to recognise *nāsikh* (abrogating) and *mansūkh* (abrogated), or general and particular *khavar*.

81. And the mistake (*khaṭa'*) and erroneous doctrine of these two groups (*madhhab*) is clear. I do not support either of them.

82. Is there any proof (*ḥujjah*) for you to declare something permissible that we know with certainty (*iḥqāṭah*) to have been prohibited on the basis of something that we do not know with certainty?

83. I said: Yes.

84. He said: What is it?

85. I said: What is your opinion concerning this man beside me, are his blood and his property inviolable?

86. He said: Yes.

87. I said: And if two witnesses give testimony (*shahādah*) against him that he killed a man and took his property, and that is what he has here in his hands?

88. He said: I will kill him in retaliation, and I will hand over his property which is in his hands to the heirs of the (murdered) man vouched for by witnesses to be its owner.

89. He said: I said: Is it possible that two witnesses give false and wrong testimony?

90. He said: Yes.

91. I said: How have you made lawful the sacred blood and property guaranteed by what is certain, on the strength of two witnesses, which is not certain?

92. He said: I have been ordered to accept testimony.

93. I said: Do you find a text (*naṣṣ*) in the Book of Allāh which (says that) you should accept testimony with regard to killing?

94. He said: No, but [I do so] by deducing that I have been ordered to do it for a reason.

95. I said: Is it possible for that meaning to apply to a ruling other than execution, since killing involves a choice between retaliation and blood money (*diyah*)?

96. He said: The proof concerning that is that since the Muslims agree that killing can be established by two witnesses, we say that the Qur'ān may support the meaning (implication) which they have agreed upon; and the general body of Muslims will not make a mistake concerning the meaning of the Book of Allāh, even though some of them may do.

97. Then I said to him: I think that you have retreated into accepting *khavar* from the Apostle may Allāh bless him and grant him peace and *ijmā'* is weaker?

98. He said: That is compulsory for me.



99. I said to him: We find then that you have made lawful sacred blood and property guaranteed by what is certain, by testimony which is not certain?

100. He said: I have been ordered to do that.

101. I said: If you have been ordered to do that based on the outward truthworthiness of two witnesses, you accept both of them outwardly, while no one knows the invisible (*mughayyab*) but Allāh. And we require of the traditionist (*muḥaddith*) more than we require from the witness (*shāhid*).<sup>40</sup> We allow many men's testimony, (but) do not accept the *ḥadīth* of one of them. And we find the evidence of the truth or the error of a *muḥaddith* from those *Ḥuffāz* (religious scholars) who know him and (by comparing his words) with the Qur'ān and the *sunnah*. In this, there is (much) evidence. And this is not possible for testimonies.<sup>41</sup>

102. He said: He continued to draw the distinction which I have described regarding the rejection of *khavar*, accepting some of it sometimes, and at other times rejecting the like of it, despite the explanation of the error in this which I have mentioned, and (the consequences) entailed for him in reaching differing utterances.

103. In what we have described here, and in the Book<sup>42</sup> [i.e. *al-Risālah*] preceding this, there is an indication of the proof against them and others.

104. Then he said to me: I have accepted from you that I should accept *khavar* from the Apostle may Allāh bless him and grant him peace, and I know that the evidence

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<sup>40</sup> *Al-Risālah*. paras. 1158-9, 1004-1100.

<sup>41</sup> *Al-Risālah*. paras. 1000-1002, 1012-3.

<sup>42</sup> See the discussion of *khavar al-wāhid* and its arguments in *al-Risālah*. pp. 369-471.

for the meaning of what He intended is through Allāh's requirement to obey him (the Prophet), which you have described.

However, when I have accepted his *khavar*, I have accepted on the authority of Allāh what the Muslims have agreed upon and have not disputed, and I know what you mentioned, that they only agree -and do not dispute-on a truth, if Allāh, the High wills.

105. What do you think if we do not find an explicit text in the Book of Allāh, the Exalted, nor a report from the Prophet may Allāh bless him and grant him peace on matters which I hear you being asked about and to which you reply by either declaring something *wājib* (obligatory) or declaring it *bāṭil* (invalid)? Where do you get the authority to do this? And how can you tell what is correct and what is incorrect? Are you exercising *ijtihād* in seeking some specific object which is not visible to you or are you speaking arbitrarily? Who has permitted you to make lawful or to make unlawful, or to separate (things) without any existent example which you can follow?

If you allow yourself that it would be permissible too for another to say whatever comes into his mind, without any example (*mithāl*) to follow and without any guideline (*‘ibrah*) cited against him by which you can know the correct from the erroneous!

106. Explain this if you can provide a proof: if not, your statement of that for which you have no proof will be rejected.

107. Then I said to him: It is not for me or for any *‘ālim* (knowledgeable person) to speak about permitting or prohibiting anything, or to take anything from anyone or to

give it to anyone, unless he finds it (written) as a text in the Book of Allāh, a *sunnah* or *ijmāʿ*, or in a binding *khavar* (*khavar yalzamu*).<sup>43</sup>

108. What is not included in one of these *khavars*, we are not allowed to say on the basis of our own approval (*istiḥsān*),<sup>44</sup> nor by what comes into our minds. We can say it only as *qiyās* (analogy) based on *ijtihād* required by binding *khavar*.

109. If it were permissible for us to say it without any model such as *qiyās* by which the correct and the mistaken can be known, it would also be permissible for everyone to say, like us, whatever comes into his mind. But we and the people of our time are obliged not to say anything other than as I have described.

110. Then he said: What I know is that your scope for speaking is restricted unless it is extended by *qiyās*, as you have described. And I have two questions for you;

111. First: You have to mention the proof that you have authority to practise *qiyās*, since *qiyās*, we all know, is like *khavar*, nothing but *ijtihād*. So how is it restricting for you to speak without *qiyās*? Please make your answer as brief as you can.

112. I said: Allāh has revealed the Book as a clarification (*tibyān*) of everything. There are different types of clarification: one of them is where He clarifies His obligations (which He imposes). Another is that which He has revealed in general terms (*jumlah*) and has enjoined (us) to use *ijtihād* to seek out (its meaning); and He indicated how it should be sought out by signs which He has created in His servants

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<sup>43</sup> *Al-Risālah*. paras. 120, 1468.

<sup>44</sup> *Al-Risālah*. paras. 70, 1456-1468. *Istiḥsān* literally means considering something as good. And in technical term is abandoning *qiyās* and holding to what is dear to people. See al-Jurjānī, *al-Taʿrīfāt*. pp. 18-9.

by which He showed them the manner of seeking out what He made an obligation upon them.

113. Since He has commanded them to seek out that which He has made an obligation upon them, there are two indications- and Allāh knows best- to guide you toward that. One of them is that the seeking out should be undertaken only through something on account of which the searcher will be directed, not that the searcher should seek it out arbitrarily (*mutaʿassifan*). The other is that He has charged him to exercise *ijtihād* in the endeavour to attain that which Allāh has commanded him to seek out.

114. He said: Please mention the proof (*dilālah*) for what you have described<sup>45</sup>?

115. I said: Allāh, the Exalted says:

"We have seen the turning of thy face to heaven (for guidance, O Muḥammad). And We shall make thee turn (in prayer) towards a *qiblah* which is dear to thee, so turn thy face toward (*shaṭr*) *al-Masjid al-Ḥarām* (the Inviolable Place of Worship)".<sup>46</sup> And "*shaṭrahuḥ*" (towards it) means "*qaṣd*", and that means facing it (*tilqāʾ*).

116. He said: Yes [certainly].

117. I said: And He (Allāh) says:

"(And) He it is who hath set for you the stars that ye may guide your course by them amid the darkness of the land and the sea".<sup>47</sup>

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<sup>45</sup> *Al-Risālah*, para. 1456.

<sup>46</sup> *Al-Baqarah* : 144. Cf. *al-Risālah*, paras. 64-5, 104-111, 1378-1380.

<sup>47</sup> *Al-Anʿām*: 97. Cf. *al-Risālah*, para. 66.

118. And He said: "And He hath constrained the stars and the day and the night and the sun and the moon to be of service unto you, and He created the mountains and the earth".

119. And He made *al-Masjid al-Ḥarām* where He placed it in His earth. Then He commanded His servants to turn towards it. Among them are those who can see the *Bayt (Ka'bah)*, and cannot fail to direct themselves correctly towards it, and among them there are those who are absent from it and whose dwelling is far away from its location and so they turn themselves towards it, guiding themselves by the stars, the sun, the moon, the winds, the mountains and the directions from which the wind blows. All of these may be employed in certain circumstances and be used as guidance, to enable one to dispense with others.<sup>48</sup>

120. He said: This is as you have described, but are you certain that whenever you turn towards (it), you will be correct?

121. I said: As for being certain whenever I turn towards it, I shall hit the mark as far as I have been commanded, and I have not been commanded more than this:- yes.

122. He said: But are you certain that when you turn towards the *Ka'bah*, you will hit the mark accurately?

123. I said: This is something which I have not been commanded to be absolutely certain about. I have been commanded only to exercise *ijtihād*.

124. And he replied: So what have you been commanded?

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<sup>48</sup> *Al-Risālah*. paras. 63-8, 104-114, 1336-1349, 1378-1383, 1446.

125. I said: (I have been commanded) to turn towards the *al-Masjid al-Ḥarām*, and I have done what I have been commanded. No human being knows for certainty the place of the *Ka'bah* correctly unless he can see it with his own eyes. As for what he is physically distant from, no human being can be certain of that.

126. He said: Then are you saying that you are correct?

127. I said: Yes, in the sense I have said. I have correctly done what I have been commanded to do.<sup>49</sup>

128. Then he said: No answer concerning this matter will ever be sound other than the answer you have given.

129. And whoever says, "I have been commanded to be certain that I hit the mark" is asserting that he never prays without being certain that he hits the mark. Yet the Qur'ān indicates, as you have described, that he has been ordered only to turn towards *al-Masjid al-Ḥarām*. And the turning (*tawwajuh*) is only an endeavour to discover (*ta'akhhī*) and an *ijtihād*, not a certainty (*iḥāṭah*).

130. Then he said: Please mention something other than this, if you have anything.

Al-Shāfi'ī-may Allāh have mercy upon him- said.

131. And I said to him: Allāh, the Exalted says:

"Who of you killeth it of set purpose shall pay its forfeit in the equivalent of that which he hath killed, of domestic animals, the judge to be two men among you known for their *'adālah* (probity)".<sup>50</sup>

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<sup>49</sup> *Al-Risālah*, paras. 1336-1349, 1381-1391, 1423-1428.

<sup>50</sup> *Al-Mā'idah*: 95. cf. *al-Risālah*, para 118.

132. Concerning the equivalent (*mithl*), the two shall exercise *ijtihād* about it, because the characteristics of the animals may vary, since it may be small or big. He has not commanded the two just men to give a judgement on the equivalent other than by *ijtihād*. He did not make them responsible for making judgment on it until He had first commanded them concerning the equivalent.<sup>51</sup>

133. And this indicates something like what was indicated by the previous *āyah* which is prohibited to him- if there is to be *ijtihād* to find the equivalent, that he should decide by *ijtihād* other than the equivalent.

In this question of equivalent, he has not been required, nor in the case of *qiblah* when it is unseen to him, and he is not certain to hit the correct *qiblah* when he turns to face it, and he is not required to pray wherever he pleases without using *ijtihād* to seek out what will indicate the *qiblah* or the [the equivalent of the] wild game (*ṣayd*).

134. It [also] shows that it is not permissible for anyone to speak on anything of religious knowledge (*ʿilm*) except by the use of *ijtihād*. And *ijtihād* on this is the same as *ijtihād* in searching for the *Kaʿbah* in the *qiblah* and the equivalent with regard to wild game.

135. *Ijtihād* is only for those who know the evidence for that from a binding *khavar* (*khavar lāzim*), the Qurʾān, *sunnah* or *ijmāʿ*, and then seeks it out by the use of *qiyās* and deduction (*istinbat*), using part of what I have described, just as he seeks out what is hidden from him concerning the *Kaʿbah*, and what is unclear to him concerning the equivalent of wild game.

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<sup>51</sup> *Al-Risālah*. paras. 70-1, 117-9, 1394-1401.

136. As for those who have no skill in this matter, it is not lawful for them to say anything about [legal] knowledge (*‘ilm*).<sup>52</sup>

137. Similar to this is that Allāh has stipulated that witnesses should be *‘adl* (men of probity), and *‘adālah* (probity) is acting in accordance with obedience and understanding in giving evidence. If this appears to be present, we accept the witnesses's evidence although within himself he may be concealing the contrary of that. But we have not been given the task [of knowing] what is concealed, nor are we allowed, if we are not certain that his inward (nature) is the same as his outward appearance, to allow the testimony of any who comes to us, if there are no indication of *‘adālah* in him. This indicates what is indicated by the cases before it.

138. It is clear that nobody is allowed to speak about [legal] knowledge without what we have described.

139. He said: Will you show it to me in a way which people will recognise?

140. So I said to him : Yes.

141. He said: What is it?

142. I said: Consider how a garment may vary in its defects, (and also) slaves (*raqīq*) and other goods; to whom will the judge (*ḥākim*) show it to assess it?

143. He said: He will show it only to those who know about it (*ahl al-‘ilm bih*)

144. I said: [Is it] because their condition differs from the condition of those who are ignorant (*ahl al-jahālah*), and they know its market price the day they see it, and what may be counted a defect which will lower its value and what will not lower its value?

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<sup>52</sup> *Al-Risālah*. paras. 1456-1460.



145. He said: Yes.

146. I said: And the other people do not know that?

147. He said: Correct.

148. I said: And their knowledge about it is *ijtihād*, in that they compare one thing to another, according to the market [price] of the day?

149. He said: Yes.

150. I said: And their comparison (*qiyās*) is an *ijtihād*, not a certainty?

151. He said: Yes.

152. I said: And if other intelligent people (*ahl al-ʿuqūl*) say, "We shall exercise our *ijtihād* since you are not certain that those people are right", will you not say to them: "Those people are exercising *ijtihād* knowingly, but you are exercising it ignorantly, so you are acting arbitrarily"?

153. He said: They will have no other answer. And this is a sufficient answer to establish the proof.

154. I said: And if those who know about it were to say, "Since we are not certain, we will speak about it without employing *qiyās*, and think about today's price and make a guess about it", they would not have the right to do that?

155. He said: Yes.

156. I said: So one who is no scholar of the Qurʾān or *sunnah* or the statements of the *ʿulamāʾ*, though he is *ʿāqil*, is not permitted to exercise *qiyās*; rather he must suspend judgement.

157. If it were permissible for a learned man to abandon reasoning by *qiyās* and *ijtihād* on the matter, it would also be permissible for ignorant men to speak (about

the matter). Perhaps it would be more excusable for them to speak about it, because the former produces a mistake purposely without any *ijtihād* whereas they produce it in ignorance.

158. He said: Could you give me a proof other than what you have said that the learned men have the right to speak (about the matter)?

159. I said: Yes.

160. He said: Would you please mention it?

161. I said: I do not know anyone who opposes the view that our predecessors in times gone by, and the generations after them, up to the present day, judged and *muftīs* issued *fatwās* on matters concerning which there is no text in the Book and no *sunnah*. And in this, there is a proof (*dalīl*) that they gave verdicts based on *ijtihād*-if Allāh wills.

162. He said: Could you give (proof) for this from a *sunnah*?

163. I said: Yes. °Abd al-°Azīz b. Muḥammad b. Abī °Ubayd al-Darāwardī (d. 186/189) informed us, on the authority of Yazīd b. °Abd Allāh b. al-Hād (d. 139), on the authority of Muḥamad b. Ibrāhīm al-Taymī (d. 120), on the authority of Busr b. Saīd (d. 100), on the authority of Abū Qays (d. 54) the *mawlā* of °Amr b. al-°Āṣ, on the authority of °Amr b. al-°Āṣ that he heard the Messenger of Allāh may Allāh bless him and grant him peace saying;

"When a judge judges and exercises *ijtihād* and gives a right judgement, he will have two rewards, but if he judges and exercises *ijtihād* and errs in his judgement, he will have one reward".<sup>53</sup>

164. And Yazīd b. al-Hād said: Then I related (*ḥaddathu*) this *ḥadīth* to Abū Bakr b. Muḥammad b. °Amr b. Ḥazm (d. 110), and he said: Abū Salamah (d. 104) related the like of this to me on the authority of Abū Hurayrah.<sup>54</sup>

165. [Al-Shāfi° said]: Then he replied: I accept [the *ḥadīth*] which I hear you narrating.

"When he exercises *ijtihād* and gives a right judgement, he will have two rewards; and when he exercises *ijtihād*, but makes an error, he will have one reward".

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<sup>53</sup> *Tartīb Musnad*. vol. II, pp. 176-7.

<sup>54</sup> *Al-Risālah*. para. 1410.

[CHAPTER OF] AN ACCOUNT OF THE DOCTRINE OF THOSE WHO  
REJECT *KHABAR AL-KHĀṢṢAH*<sup>55</sup>

Al-Rabī<sup>c</sup> informed us that: Muḥammad b. Idrīs al-Shāfi<sup>c</sup>ī said:

166. Another group agreed with us that accepting the validity of *khavar* from the Prophet may Allāh bless him and grant him peace is obligatory for the *ummah*, and considered what I have mentioned by way of argument against those who reject *khavar* to be an argument which they accept and do not like anyone going against it.<sup>55</sup>

167. Then a group of them spoke to me, both together and as individuals. I cannot remember what each individual said to repeat it now, nor what the group said, or all of the answers I gave, or what was said to me. However I have made an effort to reproduce all their arguments and have set out some of the things I said, and to whom I said them, and I have mentioned some of the things I think they ought to accept. I ask Allāh, Most High for freedom from error and for success given by Him.

168. He said: In general terms, what they said was that no one, whether *ḥukkām* (judges) or *muftīs*, can give a *fatwā* or judge except on the basis of certainty.

169. Certainty (*iḥāṭah*) is everything known to be right in outward and inward reality which is testified to on Allāh's behalf. They are the Qur'ān, and the *sunnah* that everyone is agreed on, and every thing which people are agreed on and have no dispute about. Thus, the judgement [for all those things] is similar and we are not

<sup>55</sup> Its synonyms are *khavar al-wāḥid* (pl. *akhbār al-āḥād*), *khavar al-infirād* or *al-khavar al-munfarid*. See *Ikhtilāf al-Ḥadīth*. p. 53.

<sup>55</sup> See *al-Risālah*: paras. 9901-1308; *Ikhtilāf Mālik*. p. 261.

obliged to accept anything from them except what we have said, such as that *zuhr* prayer is four (*raka'āt*) since that is not disputed, no Muslim rejects it, and no one can doubt that.

170. I said to him: I do not consider it to be hidden from you or from anyone who is present with you that you cannot find in *‘ilm al-khāṣṣah* what is found in *‘ilm al-‘āmmah*.

171. He said: How?

172. I said: *‘Ilm al-‘āmmah* is as you have described; you will not meet anyone among the Muslims without finding knowledge of it in his possession, and no one will reject something of it said by another, as I have described with regard to the basic obligations (*farā'id*), number of prayers and similar matters.<sup>56</sup>

173. The *‘ilm al-khāṣṣah*<sup>57</sup> (is) the knowledge (you find) of the predecessors and the successors who came after them, up to those whom you have met. Their opinions and the explanations on matters where there is no text of the Qur'ān available which they could interpret, are different and obviously at variance, [and they did not have recourse to *qiyās*] and, where they use *qiyās*, *qiyās* admits of disagreement. Where they do disagree, the very least the person who disagrees with them would consider that those who maintain the opposite are mistaken and those who disagree with him will think the same of him. The first level i.e. (*‘ilm al-‘āmmah*) is not like this.

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<sup>56</sup> *Al-Risālah*. paras. 961-997; *Ikhtilāf al-Ḥadīth*. p. 37.

<sup>57</sup> *Al-Risālah*. para. 967; *Ikhtilāf al-Ḥadīth*. pp. 37-8.

174. What has been said (on the basis of) *qiyās* since it is possible for *qiyās* to be wrong, cannot, in your opinion, be considered a matter of certainty nor would one swear by Allāh that it is all true.

175. And I have mentioned several other things which are binding upon him in my view apart from this.

176. One of those who was present with him said: Leave this discussion (*mas`alah*), for in our view many of the matters which you have raised are against him, although not all of them. I will offer you a new argument, different from what he said.

177. I said: State it.

178. He said: [Legal] knowledge (*‘ilm*) is of different kinds: one of them is what the *‘āmmah* relate from the *‘āmmah*, which I testify to in the name of Allāh and His Apostle, such as the basic obligations (*farā’iq*).

179. I said: This is the first category (*‘ilm muqaddam*), concerning which no one will dispute with you.

180. (He continued): Another is verses of the Qur’ān which are open to more than one interpretation, and which there will thus be dispute about. Whenever there is dispute, the text must be accepted according to its literal meaning and in an inclusive sense, and it must never be understood according to an inward meaning, even if it means that, except on the basis of people's consensus on that interpretation (*ta’wīl*), if they disagree, it must be accepted in its literal (outward) meaning.<sup>58</sup>

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<sup>58</sup> *Al-Risālah*. paras. 881-2, 923.

181. He said: Another is what the Muslims are agreed upon, and what they say those who came before them were agreed upon, even though they do not say that this is based on a verse of (the) Qur'ān or a *sunnah*, because, in my view, this agreement may be equivalent to the agreed *sunnah*, since their consensus would not be derived from personal opinion (*ra'y*), because personal opinion when it exists, is not something on which one finds agreement.

182. (I said): Please mention to me what is after this.

183. He said: Another kind [of knowledge] is *ʿilm al-khāṣṣah*. Proof will not be established on the basis of *ʿilm al-khāṣṣah* unless its transmission is in a way which is secure from error.

184. Then the last of them is *qiyās*. Something should not be used as a *qiyās* for another unless its start (*mubtada'*), source (*maṣḍar*) and end- from where it begins to when it ends- are the same, so that it (corresponds) to the meaning of the base (*fī maʿnā al-aṣl*).

185. Divergence is not allowed in anything that I have described.

186. And all things should be according to their *uṣūl* (principles) until the people have agreed by consensus to remove them from their *uṣūl*.

187. Consensus (*ijmāʿ*) is a proof for everything, because it is impossible for error to occur in it.

188. He said: Then I said: As for what you have mentioned about the first kind of [legal] knowledge, as far as transmission by *ʿawāmm* from *ʿawāmm* is concerned; it is as you said.

189. What do you think of the second kind, of which you have said that the *‘awāmm* do not dispute concerning it. They agree upon it, and they relate from those who were before them that they agreed upon: Do you know it, so that you can describe it? And do you know these *‘awāmm* who transmit from the *‘awāmm*? Are they like those of whom you have spoken in relation to basic obligations (*farā’īd*)? For those people were both the *‘ulamā’* and men who are not associated with legal knowledge. We do not find in Islam any one of those who are mature and not mentally handicapped who doubts that Allāh has laid down that *ṣalat al-zuhr* is four [*raka‘āt*], or is there another interpretation than this?

190. He said: Yes, there is another interpretation than this.

191. I said: Please describe it.

192. He said: This is the consensus of people of knowledge rather than those who do not have knowledge, and it is obligatory to follow them, because they alone have that knowledge and others, and they are in agreement about it. Now, their agreement is a [definitive] proof against those who not have knowledge. But if they disagree they are not proof against anyone, and the truth about the matter on which they disagree must be referred back to *qiyās* to that on which they are agreed. Whichever I find (agreement or disagreement) tells me about the views of those before them. Thus, if they were agreed for example, I would know that those before them had also been agreed in each generation.

If they were disagreed, then I would know that those before them had also been disagreed in each generation. Now, it is immaterial whether their agreement was because of a *khavar* which they actually reported or not, since they would not have



been agreed except on the basis of a *khavar lāzim* (binding report). And, if they disagreed it is immaterial whether they reported a *khavar* which agreed with some of them or whether they reported nothing, because I will accept only reports on which they are agreed. And as for those *khavar* over whose acceptance they have differed, it is possible for error to occur in them, and a proof will not be established on a matter that may possibly contain an error.

193. He said: I said to him: This is allowing the annulment of *khavar* and instituting *ijmā'*, because you claim that their *ijmā'* is a proof, whether there is a *khavar* about it or not, and that their difference is not a proof, whether there is a *khavar* about it or not.

194. And I said to him: And who are these scholars (*ahl al-ʿilm*) who, whenever they reached a consensus, a proof will be established by their consensus?

195. He said: They are those whom the people of a country have recognised as *fuqahā'* (jurists), whose opinion they are satisfied with and whose *ḥukm* (judgement) they accept.

196. I said: So, please give an example of those jurists who, if they have agreed unanimously, constitute a proof. Do you think if they are ten, and then one of them is absent, or he is present but does not speak, do you take the opinion of the nine, if they agree, as proof?

197. He said: If I say: No?

198. I said: Do you think if one of them dies, or becomes mentally disordered, do the nine have the right to pronounce?

199. He said: If I say: Yes?

200. If five die, or nine, does the one have the right to pronounce?

201. He said: If I say: No?

202. I said: Whatever you say about it is self-contradictory!

203. He said: Leave this!

204. I said: I have found rationalists (*ahl al-kalām*) spread through most of the countries, and I have found each group of them taking one of their number to whose doctrine they adhere, and whom they put in the place which you have described; are they included among the *fuqahā'* from whom a thing will not be accepted until they agree with them, or are they excluded from them?

205. He said: If I say: Indeed they are included among them.

206. I said: If you wish, say so!

207. He said: Then I do say so!

208. (Al-Shāfi'ī) said: So, what do you say concerning wiping the boots (*al-mash' alā al-khuffayn*)<sup>59</sup>?

209. He said: And if I say: No one should wipe, because whenever they dispute on something, I refer it to the basic principle (*aṣl*), and the basic principle is ablution (*wudū'*)?

210. I said: And do you say likewise on everything ?

211. He said: Yes.

212. I said: Then, what do you say about an adulterer (*zānī ṭhayyib*); do you stone him?

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<sup>59</sup> *Al-Risālah*. paras. 1610-1618, 1621; *Ikhtilāf al-Hadīth*. pp. 59-61; *Ikhtilāf Mālik*. pp. 226, 264.

213. He said: Yes.

214. I said: Why do you stone him? For some of the people, '*ulamā'*', state that there is no stoning for an adulterer/fornicator (*zānin*), on account of Allāh's words: "the adulterer and the adulteress shall each be given a hundred lashes".<sup>60</sup> So, how do you stone him and not refer back to the basic principle (*aṣl*) that his blood is unlawful until they agree unanimously that it is lawful? Those who adhere to this view argue that he is a (*zānin*) adulterer and is thus included in the meaning of the *āyah*, and should be given a hundred lashes.

215. He said: If I concede this to you on this, I will be drawn into something which will go far beyond this.

216. I said: Yes.

217. He said: I will not concede this to you on this, but will give you a response which is different from the first.

218. I said: Say it.

219. He said: I do not look to a small number of *muftīs*, but look to the majority.

220. I said: Will you describe the small number to whom you do not look? Will that be if they are less than half of the people, or one third, or one fourth of them?

221. He said: I cannot delimit them, but they are the majority.

222. I said: Are ten bigger than nine?

223. He said: These numbers are very close!

224. I said: Then delimit them as you wish.

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<sup>60</sup> *Al-Nūr*: 2.

225. He said: I am not able to delimit them.

226. I said: It seems that you wish to make this statement absolute without any clear limit, for, whenever you hold to an opinion which has been disputed, you say: it is the majority view! And whenever you want to reject an opinion, you say: they are a minority. Would you be satisfied with such an answer from anyone else?

227. Do you see how you have begun to enter into the disunion (*tafarruq*) which you have condemned?

228. What would you think if all the jurists amounted to ten, and you have claimed that you accept only from the majority, and then six of them speak and agree, and four of them disagree with them, will you not have testified that six of them are correct and four of them are in error?

229. He said: If I say: Yes.

230. I said: Then the four pronounce on another matter, and two of the six agree with them, and four (of the six) disagree with them?

231. He said: Then I will hold to the opinion of the six.

232. I said: So you abandon those who were (previously) right on the basis (of the opinion) of two, and you hold to the opinion of those who were (previously) wrong on the basis (of the opinion) of two, though it was possible for them to be wrong once; yet you reject an opinion which may be subject to error? This is a self-contradictory statement!

233. And I said to him: Consider your statement: "Proof will not be established except on the basis of what the jurists of all countries have agreed to unanimously": Do you find a way to (realize) the consensus of all of them? And the proof will not be

established upon the basis of any one until you meet all of them, or the *‘āmmah* relate from the *‘āmmah* from each one of them?

234. He said: This cannot come about.

235. I said: If you accept from them on the basis of the transmission of the *khāṣṣah*, then indeed you have accepted what you have condemned. And if you do not accept from each one except on the basis of the transmission of the *‘āmmah*, we do not find at the root of your statement that upon which the countries have agreed since you have not accepted the transmission of the *khāṣṣah*, because there is no way to reach it from the outset. They will not meet together for you in one place, and you do not have a *khavar* from them based on a transmission of the *‘āmmah* from the *‘āmmah*.

236. I said: I hear that you have followed (*qalladta*) the traditionists (*ahl al-ḥadīth*), even though, according to you, they are mistaken in what they believe with regard to accepting *ḥadīth*; so how can you be sure that they will not be mistaken in the (interpretation) that they have followed for *fiqh* and have attributed to it?

Then I hear that you have followed those with whom you are not satisfied. Yet the most skilled persons in *fiqh* in our view and in the view of most traditionists are those who follow *ḥadīth* most closely; but those (in your view) are the most ignorant of them, because ignorance (in your view) is to accept the *khavar al-infirād* (solitary *khavar*)! The same is the case for most of that concerning which they need the jurists, and in which they prefer them, even though the person who can act with absolute equity does not exist in the world!

237. He said: And how does it not exist?

238. He, or one of those who was present with him said: I am saying: I take into account with regard to this only those whose knowledge of *fiqh* the *ahl al-ḥadīth* testify to.

239. I said: There is no country but that among its people there are those of equal merit who are denied from *fiqh*. They regard them as ignorant, or not lawfully allowed to give a *fatwā*, nor is anyone lawfully allowed to accept their pronouncements.

240. And You know the people of every country differ among themselves, and you also know that the people of every country differ from others.

241. Thus we know that among the people of Makkah were those who hardly ever disputed 'Atā's (d. 114) opinion, and those who preferred others to him. After that in Makkah, al-Zinjī b. Khālīd (d. 189) gave *fatwās*. Among them were those who preferred him in *fiqh*, and those who inclined to the opinion of Sa'īd b. Sālim (d. 200). The supporters of each of one of the two men used to belittle the other, and went beyond due bounds.

242. And I know that the Madīnans would give preference to Sa'īd b. al-Musayyab (d. 94), but would also reject some of his opinions. Then there appeared among them in our time, Mālik (d. 179). Many of them preferred him, and others were extravagant in belittling his doctrines. I saw Ibn Abī al-Zinād (d. 174) going beyond due bounds in criticising his doctrines. And I saw al-Mughīrah (d. 186) and Ibn [Abī] Ḥāzim (d. 185) and al-Darāwardī following some of his doctrines, and I saw those who blamed them.

243. And I saw at Kūfah one group (*qawm*) who inclined to the opinion of Ibn Abī Laylā (d. 184), and criticised the doctrines of Abū Yūsuf (d. 182). And (I saw) others

who inclined to Abū Yūsuf's opinion, and who criticised the doctrines of Ibn Abī Laylā and whatever contradicted Abū Yūsuf. And (I saw) others who inclined to Thawrī's (d. 161) opinion, and others who inclined to the opinion of al-Ḥasan b. Ṣālih (d. 167).

244. And I have heard of other things than I have here described from (other) countries, similar to what I saw of what I have described concerning the divergence of people in the (various) countries.

245. And I saw the people of Makkah agreeing to prefer 'Aḡā' to the Successors in knowledge, and some of the Kūfans who agree to prefer Ibrāhim al-Nakha<sup>cī</sup> (d. 96).

246. Perhaps every group (*ṣinf*) of these people who preferred their own leader (*sāhib*) exaggerated the differences between him and his rivals.

247. And we see them to be like this concerning those of the 'ulamā' whom they have set up and whom we know.

248. And since the people of the cities (*amṣār*) have differed to this extent, I heard some of them who give *fatwās* swearing by Allāh such and such person has no right to give a *fatwā*, because of his deficiency of intellect and his ignorance! And so and so has no right to remain silent, meaning another of the scholars. And I have seen people of the countries who say: it is not lawful for him to give a *fatwā* because of his ignorance, meaning the man of whom the other asserted that it is not lawful for him to remain silent, because of his superior knowledge and intellect.

249. And I have found the people of every country to be as I have described them concerning the people of their time.

250. So, how did these people agree, as you claim, on one understanding, or a general understanding, when their opinion or the opinion of most of them is as I have described, and I have heard similar things about those who I haven't seen? If they agree in your favour on several of them, then you make those few people (*naḥḥar*) 'ulamā'; and if they agree on something you accept it?

251. He said: And if they disagree- as you claimed- because of the divergence of their schools of thought (*madhāhib*), or interpretation, or negligence or envy of each other: then I accept only what they have agreed upon all together.

252. Then one said to him: If they do not agree in your favour on one of them, that he is outstanding(*ḥi ghāyah*), then how can you make him an 'ālim?

253. He said: No, but they agree that he knows something about knowledge.

254. I said: Yes. And they agree in your favour that rationalists (*ahl al-kalām*) whom you do not include in the number of scholars ('ulamā') also know something about knowledge; so why do you give precedence to these people (i.e. jurists) and leave (the rest of) them among the majority of these people, i.e. the rationalists (*ahl al-kalām*)?

255. And I will not brand you and your path as anything other than the path of dissension, and then you add to that the claim to consensus (an *ijmā'*).

256. And in your claiming consensus there are several characteristics (because of) which it is obligatory for you, on the basic principles of your school of thought, to abandon claiming consensus for *'ilm al-khāṣṣah*.

257. He said: So, is there any consensus?

258. I said: Yes, we praise Allāh- there are plenty in the basic obligations (*jumlat al-farā'id*) which we are not allowed to be ignorant of, and that consensus is that which,



if you said "the people have a consensus", you would not find around you anyone who knows anything saying to you that this is not a consensus.

259. This is the way by which those who claim consensus can be declared to be correct. But only with regard to matters of each one of the *uṣūl al-ʿilm*, not the derivatives, nor any other *uṣūl*.<sup>61</sup>

260. As for the consensus which you claim, when you are aware of disagreement in your own time, and report it from the people of each generation, think about it. Is this allowed to be consensus?

261. He said: One of your colleagues occasionally claimed consensus on some things, and I have never heard anyone among them mention his opinion without criticising it; and that is blameworthy in my view.

262. I said: Why do you blame him and they blame him? Claiming consensus on the basis of a group (*firqah*) is more likely to be achieved than your claiming consensus on the basis of the entire *ummah* in the world!

263. He said: We blame him only because we find in Madīnah disagreement in every generation regarding what he claimed as consensus. And consensus cannot occur except by what I have described, i.e. that nobody opposes it. Perhaps consensus could be in his view what was supported by the majority, even though a small number opposes it. But one should [not speak of "consensus"] nor the view of "the majority", when nothing is related from them. And those from whom nothing is related cannot

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<sup>61</sup> *Al-Risālah*. para. 1559.

be described as being in consensus, and equally cannot be described as holding opposing views.<sup>62</sup>

264. Then I said to him: If what you are saying is as you say, then you must concede even more, because if *ijmā'* in the sphere of specialists (*ʿilm al-khāṣṣah*) cannot be found in one group, it is even less probable that it can be found in the entire world.

265. And I said: Your statement and the statement of those who believe in consensus is the opposite of consensus.

266. He said: Show me what you have said.

267. I said: If the consensus which existed before you is the consensus of the Companions, or of the Successors, or the generation after them and of the people of your time, you will attribute to them a matter that you call consensus.

268. He said: What is it? Give me an example so that I may know it.

269. I said: It seems that you subscribe to the view that Ibn al-Musayyab was the *ʿālim* of the people of Madīnah, that ʿAṭā' was the *ʿālim* of the people of Makkah, that al-Ḥasan (d. 110) was the *ʿālim* of the people of Baṣrah, and that al-Shaʿbī (d. 109) was the *ʿālim* of the people of Kūfah among the Successors: Then you make consensus what these figures unanimously agreed upon.

270. He said: Yes.

271. I said: You assert that they never met in one gathering that you know of, and you have merely deduced their consensus from the transmission of reports from them, and whenever you find them pronouncing on matters about which there is nothing in either

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<sup>62</sup> *Ikhtilāf al-Ḥadīth*. p. 143.

the Qur'ān or the *sunnah*, you deduce that they have pronounced on the basis of *qiyās*, and you say: *qiyās* is the firm legal knowledge which scholars have agreed is right.

272. He said: I have said so.

273. I said to him : It is possible that they could have said what you did not find either in the Qur'ān or the *sunnah*, even though they did not mention it. Nor did they mention what they held as a *ra'y* (opinion). They gave their judgement according to *ra'y* not *qiyās*.

274. He said: Even though this is possible, I do not think that they would have known something but omitted to mention it, or that they would have said anything other than on the basis of *qiyās*.

275. Then I said to him: Because you find that their utterances indicate that they subscribe to the view that *qiyās* was necessary for them, or is this only something you have supposed, because this is what they ought to do?

276. I said to him: Perhaps *qiyās* does not mean to them what it means to you?

277. He said: I don't think anything except what I have described to you.

278. Then I said to him: This is what you have narrated from them to the effect that they spoke on the basis of *qiyās* is an assumption! Then you make the assumption a definitive proof?

279. He said: From where then did you yourself take *qiyās*, and forbid speaking except on its basis?

280. I said: From a different way than the one from which you take it. And I have written about it elsewhere.<sup>63</sup>

281. I said: Those who transmitted to you from them pronounced on what you yourself do not find any *khavar* for, so you assumed that they said it by *qiyās*, and you said: whenever I find their deeds agreed upon something, it is a proof (*dalīl*) of their consensus: Did they transmit to you from them that they said (what they said) on the basis of *khavar munfarid*?

282. And Ibn al-Musayyab relates from Abū Hurayrah from the Prophet may Allāh bless him and grant him peace something and held that opinion, and from Abū Saʿīd al-Khudrī something on *ṣarf* (the exchange of currency)<sup>64</sup> and held that opinion, but he has opponents who disagree with him from among the *ummah*.

283. And ʿAṭāʾ relates on the authority of Jābir b. ʿAbd Allāh from the Prophet may Allāh bless him and grant him peace something on *mukhābarah* and held that opinion, but he has opponents who disagree with him.

284. And al-Shaʿbī relates on the authority of ʿAlqamah (d. 62), on the authority of ʿAbd Allāh, from the Prophet may Allāh bless him and grant him peace on some things and held those opinions, but he has opponents who disagree with him both today and before today.

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<sup>63</sup> For further detail of *qiyās* and *ijtihād* see *al-Risālah*. pp. 476-503.

<sup>64</sup> *Ṣarf*: exchanging of money (*thaman*) either of the same kind i.e. gold with gold or of the different kind i.e. gold with silver. See al-Tahānawī, *Kashshāf Iṣṭilāḥat*. vol. I, p. 837.

285. And al-Ḥasan relates on the authority of a man, from the Prophet may Allāh bless him and grant him peace on some things and held those opinions, but he has opponents who disagree with him both today and before today.

286. And they reported to you about them that all their life they were teaching or holding doctrines in which they differed from each other. Thus they were until they died.

287. He said: Yes, indeed they relate this from them.

288. Then I said to him: So you make these people leaders (*a'immah*) in religion, and you assert that those of their deeds which are found to be in consensus are binding on the *‘āmmah* to hold to, and yet you relate varying *sunnahs* from them. And each of them separately accepts the *khavar al-munfarid* and allows ample room for disagreement. Then you criticise what they have agreed on by consensus about which there is no doubt, and you oppose them in this, and you say: One should not accept isolated tradition (*al-khavar ‘alā al-infirād*), and one should not disagree, and you suppose that they have used *qiyās*, and you assert that it is not lawful for anyone to abandon *qiyās*, and to say anything except according to what he knows.

289. Indeed in this way your doctrine on consensus is the opposite of consensus and according to the fact that you claim that they did not remain in silence about anything they know! Yet they died without one of them saying, as far as we know "consensus".

290. Yet consensus would be the greater part of knowledge (*‘ilm*) if things were as you claim. Is it not enough reproof of consensus for you that no one has related a claim of consensus from anyone after Allāh's Messenger may Allāh bless him and

grant him peace, (except in matters on which there is no dispute) except people of your own time?

291. Then he said: Indeed, some of them have claimed it.

292. I said: Do you praise his claim?

293. He said: No.

294. I said: How have you come to enter in the thing that you have blamed into something even worse than what you blamed? Do you not deduce from your way that consensus is to give up claiming consensus? And you do not look carefully at yourself when you say, "this is consensus", when one finds around you among the *ahl al-‘ilm* those who say to you: Allāh forbids that this is consensus! Rather in what you claim to be consensus, there is actually disagreement in every aspect, in any one place, or among most people from different places whose views we have been told about.

295. He said: And I said to one of those who was present at the discussion: We are leading you to the problem of what is necessary for us and for you with regard to this.

296. He said: And what is it?

297. I said: On what basis do you think the *sunnah* of the Messenger of Allāh may Allāh bless him and grant him peace, is confirmed?

298. He said: I subscribe to the first statement which our colleague made to you.

299. Then I said: What is it?

300. He said: He claims that it (the *sunnah*) is confirmed in one of three ways.

301. I said: Mention the first of them.

302. He said: What the generality of Muslims (*khavar al-‘āmmah*) relate from the generality of Muslims.

303. I said: Is it like your first statement, such as that the *zuhr* [prayer] is four *raka'āt*?

304. He said: Yes.

305. Then I said: This is something not a single person I know will contest. What is the second way?

306. He said: *Tawātur al-akhbār*.<sup>65</sup>

307. Then I said to him: Define for me *tawātur al-akhbār* in the minimum way that confirms the *khavar*, and give me an example of it, so that we will know what he says and what you say.

308. He said: Yes, whenever I find these individuals, of the four (prominent jurists)<sup>66</sup> whom you take as an example, narrating and agreeing, that the Messenger of Allāh may Allāh bless him and grant him peace prohibited something or made it lawful, I deduce that, because of the distance of their countries, each one of them has accepted the legal knowledge from someone different from the person from whom his colleague accepted it, and that the person who conveyed it to us accepted it from him, and did not accept from his colleague, since their narration from the Messenger of Allāh may Allāh bless him and grant him peace is in agreement, an error is impossible in it.

309. He said: And I said to him: *Tawātur al-akhbār* would not, in your view, come from four individuals [in the plurals] in one country, even though the people of that

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<sup>65</sup> *Tawātur al-akhbār* literally is continuously recurrent. In technical term, it denotes reports by an indefinite number of people in such a way that precludes the possibility of their agreement to perpetuate a lie. See al-Tahānawī, *Kashshāf*: vol. I, pp. 412-3; Mohamad Hashim Kamali, *Principles of Islamic Jurisprudence*, p. 87.

<sup>66</sup> It refers to Ibn al-Musayyab, 'Atā', al-Ḥasan and al-Shā'ibī.

country accept from them, until the Madīnans relate from the Madīnans, the Makkans relate from the Makkans, the Baṣrans relate from the Baṣrans, and the Kūfans relate from the Kūfans, with each one of them relating his *ḥadīth* from a different one of the Prophet's Companions than the man from whom his colleague relates, and they all together agree unanimously on the narration from the Prophet may Allāh bless him and grant him peace because of the reason which you have described?

310 He said: Yes, because, if they were all in one country, it is possible that they might have come to a secret understanding on a report which would be impossible for them if they were in different countries!

311. Then I said to him: That is a every bad thing to suggest about someone you treat as a leader (*imām*) in your religion, since you have begun and followed (such a way)!

312. He said: Please mention what charge is found against me in this?

313. Then I said to him: Do you think that if you meet a man (who was present at the battle of) *Badr*, and they are the ones who are to be given precedence, and whom Allāh has praised in the Qur'ān and then he related to you a *khābar* from the Messenger of Allāh may Allāh bless him and grant him peace, you would not consider him a proof? And that his *khābar* would not be a proof against you for what you have described?

Is it not more appropriate that the isolated reports (*khābar al-wāḥid*) of those who come after them should not be accepted from them because of their being inferior in every virtue, because what is possible with regard to those who are better than them is possible with regard to them and more so.

314. He said: Yes.



315. Then I said: Are you being arbitrary in deciding the soundness (validity) of transmission? Take as an example Abū Salamah (d. 94) in Madīnah relating to you that he heard Jābir b. °Abd Allāh relating that the Prophet may Allāh bless him and grant him peace or: that he considered the religious merit of Abū Salamah and considered the religious merit of Jābir. And take as an example al-Zuhrī (d. 124) relating to you that he heard Ibn al-Musayyab saying: I heard °Umar, or Abū Sa°d al-Khudrī saying: I heard the Prophet may Allāh bless him and grant him peace. And take as an example Abū Ishāq al-Shaybānī (d. 141) saying: I heard al-Sha°bī, or I heard Ibrāhim al-Taymī (d. 141), one of them saying: I heard al-Barā' b. °Āzib, or I heard one of the Prophet's Companions that he named. Or take as an example Ayyūb (d. 131) relating from al-Ḥasan al-Baṣrī saying: I heard Abū Hurayrah or another of the Prophet's Companions saying: I heard the Prophet may Allāh bless him and grant him peace (saying) permitting something or prohibiting it; Does this establish [a definitive] proof?

316. He said: Yes.

317. Then I said to him: Is it possible in your view for al-Zuhrī to misreport from Ibn al-Musayyab, and for Ibn al-Musayyab to misreport from those who were before him? (And is it possible) for Ayyūb to misreport from al-Ḥasan, and for al-Ḥasan to misreport from those who were before him?

318. Then he said: If I said: Yes?

319. I said: It would be necessary for you to accept *khavar al-wāḥid* even though it is possible there is in it an error made by the person whom you met, and the persons who are later than those above him, and those who are above, later than the

Companions of the Prophet may Allāh bless him and grant him peace (and it would be necessary for you) to reject *khavar al-wāḥid* from the Companions of the Prophet, whereas they are superior to those who came after them. So, you are rejecting the *khavar* because of the possibility of a mistake in reports from the Companions of the Prophet may Allāh bless him and grant him peace while they are the best of people, and you accept it from those who are not equal with them in merit! Because each of these people has attributed a definite statement to the person he reports from, and those who are above him have attributed a definite statement from those who are above them, until it goes back to the Messenger of Allāh may Allāh bless him and grant him peace. So, this is the chain of transmitters (*tarīq*) that you have blamed.

320. He said: This would be the case if I said that. But, what would be your opinion if I do admit that this is the case.

321. I said: This is defensible only by withdrawing from the position you previously held, or by abandoning the answer through turning aside or breaking off (the discussion). And turning aside is the less worthy of the two.

322. He said: If I said: I will not accept from one whose *khavar* we confirm except from four separate ways, as I do not accept from the Prophet may Allāh bless him and grant him peace except from four separate ways?

323. He said: Then I said to him: This would bind you. Do you say it?

324. He said: If we accept it, this would never exist.

325. Then I said: Yes. And you know that four from al-Zuhrī do not exist, nor three, where al-Zuhrī is the fourth of them, from a man from a Companion of the Prophet may Allāh bless him and grant him peace.

326. He said: Yes, but leave this.

327. He said: And I said to him: Those who said "I accept from four, not three"? What do you think if a man said to you "I only accept from five", or another said, "from seventy"? What is your argument against him? And who sets out to you the four?

328. He said: Indeed, I just gave them as an example.

329. I said: Could you delimit those who will be accepted?

330. He said: No.

331. I said: Or you know it, but do not reveal, since it would be embarrassing on account of what will follow.

332. And his embarrassment was clear for all to see.

333. And I said to him or to some of those present with him: What is the third way that information will be confirmed from the Prophet may Allāh bless him and grant him peace?

334. He said: Whenever one of the Prophet's Companions relates from the Messenger of Allāh may Allāh bless him and grant him peace a judgement (*ḥukm*) which he himself goes by and which no one else opposes him, we deduce two things: one of them that he related that *khavar* in the presence of their group. And secondly, their omission to reject it through a *khavar* which opposes was due to their knowledge that that was a *khavar* he reported to them about something that actually happened. Therefore, it was a *khavar* on the authority of their entire group.

335. I said to him: How rarely have I seen you moving to a new position without you arguing weaker arguments than the one you have abandoned!

336. He said: Please explain to us what you have said.

337. I Said to him: Is it possible for one of the Companions of the Prophet may Allāh bless him and grant him peace to relate to one man or a small group of people at Madīnah a *ḥadīth* that you validate as from the Messenger of Allāh may Allāh bless him and grant him peace, and (is it possible) that he may have come to one of the countries, then related it there to one man or a group, or related it while on a journey, or as he died, to one man or more?

338. He said: If I said: It is not possible that one of them would relate a *ḥadīth* unless it were well-known among them?

339. I said: Sometimes you find numerous Successors relating a *ḥadīth*, but they name only one. Were it well-known among them since they heard it from others, they would have named those from whom they had heard it.

340. And sometimes we find them disagreeing on something, on which a *ḥadīth* has been related from the Prophet may Allāh bless him and grant him peace, with some of them holding a view in accordance with the *ḥadīth*, and others maintaining the opposite.

341. He said: How do you explain this?

342. I said: If those whose saying contradicts the *ḥadīth* had heard the *ḥadīth* from the Prophet may Allāh bless him and grant him peace, they would not say, if Allāh wills the opposite to it.<sup>67</sup>

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<sup>67</sup> *Al-Risālah*. paras. 598-9; *Ikhtilāf al-Ḥadīth*. pp. 44, 50.

343. And I said to him: Indeed, Ibn ʿAbbās and others have related the doctrine "the oath plus the witness (*al-yamīn maʿ al-shāhid*)" from the Prophet may Allāh bless him and grant him peace, and the opposite of it is not recorded from any of the Companions of the Prophet that I know of. Therefore, on your basic principle you are bound to hold (accept) the doctrine and make it *ijmāʿ*.

344. Then some of them said: What he said on this is not our doctrine (*madhhab*).

345. I said: I always find this attitude in him and others when they address us. We seek help from Allāh.

346. He said: The oath with the witness is an *ijmāʿ* of Madīnah.

347. Then I said: No, it is something about which there is dispute. However, we accept a ruling although disputed, when it is confirmed on the authority of the Messenger of Allāh through the chain of transmitters by which it is confirmed.

348. He said: And I said to him: Who are those who whenever their doctrines are in agreement with the *khābar*, it is to be regarded as valid; and whenever they disagree, you put the *ḥadīth* aside because of their disagreement?

349. He said: The Companions of the Prophet may Allāh bless him and grant him peace.

350. (Al-Shāfiʿī said): *khābar al-khāṣṣah*?

351. He said: No.

352. I said: Then, is knowledge acquired from them because of their *ijmāʿ* or *ikhtilāf* (disagreement) by virtue of a *khābar ʿāmmah*?

353. He said: If I have not acquired it from *khābar ʿāmmah*, I look for the *ijmāʿ* of the people of knowledge today: Therefore, when I find that they are not agreed, I deduce

that their disagreement is derived from the disagreement of those who were before them.

354. I said to him: Do you deduce that their *ijmā'* is a *khavar* of their entire group?

355. He said: What do you say?

356. I said: I say: It is not possible for anyone to speak until he knows their *ijmā'* in the different countries. And he would not have applied the doctrine of those whose land is far or near without a *khavar* of the entire group reported from the entire group.

357. He said: If I said it?

358. I said: Say it if you want!

359. He said: This could be very difficult.

360. Then I said to him: For that reason, it also does not exist.

361. Its contrary is against you in terms of *qiyās*. When you declare that one person may draw *qiyās*, as you suppose, then you have allowed *qiyās*, and it is possible in *qiyās* that there is a mistake. And you decline to accept the *sunnah* (*ḥadīth*), because there could be a mistake on the part of those who relate the *sunnah* (*ḥadīth*). So, you allow the weaker and reject the stronger!

362. And I said to some of them: Do you think your doctrine "their *ijmā'* is an indication (*ijmā'uhum yadullu*)" if they said to you: what we said -collectively and separately- where we accept the *khavar* on that of the sort which is confirmed in our point of view from those who are before us. And we are agreed that it is permitted to us on a matter where there is no text (*naṣṣ*) or *sunnah* to judge on the basis of *qiyās*, even though we differ. Do you reject the reports of those concerning whom you have

said that their reports and their agreed actions will be *hujjah* in one question yet accepted in another?

363. What do you think if one said to you: I follow them in validating the reports of trustworthy persons, even though those reports are isolated, and I accept from them doctrine based on *qiyās* on which there are no reports. Therefore I let them have disagreement, and I should follow them in each case: is he producing stronger proof, or more appropriate to follow them, or better praise of them, or you yourself?

364. He said: Is this your view?

365. I said: Yes.

366. I said: And what does your doctrine "the *ijmā'* of Companions of the Messenger of Allāh may Allāh bless him and grant him peace" mean? Do you mean that all of them, or most of them, say the same thing, or do the same action?

367. He said: I do not mean this, and this does not exist. However, when one of them relates a *ḥadīth* from the Prophet may Allāh bless him and grant him peace and none of them opposes it, that is an indication of their satisfaction with it, and that they recognise that what he said is what happened.

368. I said: Is it not possible that he related a *ḥadīth* and they did not hear him, or [is it possible that] he related it while those who heard his *ḥadīth* had no knowledge (*ʿilm*) that what he said was as he said, or was contradictory to what he said? However, it is a duty of the one who is told a *ḥadīth* to hear and, if he does not know of any opposing judgement, he should not reject it.

369. He said: This (situation) is possible on the ground you have said. But as for the leading Companions of the Messenger of Allāh may Allāh bless him and grant him

peace, it is impossible that one of their transmitters would relate a *ḥadīth* on a matter, and that they would then omit to oppose it, except on the knowledge (*‘ilm*) that it was as he said.

370. And he said: Whenever one of their judges gives a verdict, and they do not oppose it, it is knowledge (*‘ilm*) from them that what he said is correct, and it is incumbent upon them to stand on his judgement.

371. I said: Is it possible that they would believe him because of his outward truthfulness just as they would accept the testimony of two witnesses because of their apparent truthfulness?

372. He said: If I said: No.

373. Then I said: If you say "no" where they have accepted *ḥabār al-wāḥid* and adhered to it, I know you are ignorant of what we have said. And if you say concerning that whose like is possible that it is not possible, you are ignorant of what is incumbent on you!

374. He said: Then, what would you say?

375. I said: I say: Their keeping silent and their lack of opposition might be on the ground of knowledge of what he said, or it might be without knowledge about it. Their silence might be considered as an acceptance of that (*ḥadīth*), or it might be considered as suspending judgement (*wuqūf*) about it or that most of them had not heard it, rather than what you have said. And (it is considered) as deduction from them about what they have heard about one who was truthful and reliable according to them.

376. He said: Abandon this.



377. I said to some of them: Do you know that Abū Bakr in his caliphate (*imārah*) divided property (*māl al-fay'*)<sup>68</sup> and gave equal portions to freeman and slave? And he treated the grandfather<sup>69</sup> as father in inheritance?

378. He said: Yes.

379. I said: They accepted from him the distribution (of *fay'*), and they did not oppose him during his life on the matter of the grandfather in inheritance?

380. He said: Yes, but if I said that they opposed him during his life?

381. I said: (You mean that) he wanted to make a judgement while someone was opposing him?

382. He said: Yes, but I did not say that!

383: (Al-Shāfi'ī) said: After that, 'Umar came and classified people in the distribution on the basis of kinship and precedence (*sābiqah*), and he excluded slaves from the distribution, and gave both a grandfather and brothers<sup>70</sup> a share in inheritance?

384. He said: Yes.

385. I said: And 'Alī became ruler, and he equalised the distribution?

386. He said: Yes.

387. I said: So, this is on the basis of the reports of 'āmmah from the three of them in your point of view?

388. He said: Yes.

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<sup>68</sup> *Al-fay'* is a property taken from non-believers without having any battle, while *al-ghanīmah* is a property taken from them after having a battle. See al-Tahānawī, *Kashshāf*, vol. II, p. 1103. For the differences between *al-ghanīmah* and *al-fay'* see al-Shāfi'ī, *Aḥkām al-Qur'ān*, vol. I, pp. 152-166.

<sup>69</sup> *Al-Risālah*, para. 1774.

<sup>70</sup> *Al-Risālah*, para. 1773.

389. I said: Say about it what you like.

390. He said: What do you yourself opine with regard to that?

391. I said: I say: In matters on which there is no text of the Qurān nor any *sunnah* [for a solution to a problem], when the *mujtahidūn* seek out by *ijtihād*, everyone is allowed- if Allāh wills- to practise and pronounce (legally) on the basis of what he thinks is right, not on the basis of what you have said. Say whatever you like.

392. He said: If I said: The first practice (of Abū Bakr) is binding upon them. The second and third practices (i.e. ʿUmar and ʿAlī) require to be similar to the first practice, not to contradict it. And if I said: Actually they were disagreeing with Abū Bakr on his practice during his life, that would entail that he (Abū Bakr) was free to proceed with his *ijtihād* even though it contradicts theirs.

393. I said: Exactly!

394. He said: If I said: I do not acknowledge this from them, and I would not accept it unless I found the *ʿāmmah* transmitting it from the *ʿāmmah*, saying that a group of those before us related to us such and such from those who came before them?

395. Then I said to him: We do not know anyone who has a doubt about this, and the contrary has not been related from anyone. Hence, if you do not allow the like of this as being confirmed, what is your proof against anyone who opposes you in all of what you have claimed to be *ijmāʿ*, when he is saying the same as you said.

396. Then a group of those who attended said: Allāh, the Exalted has blamed disagreement, so we blame it.

397. Then I said to him: Concerning disagreement, are there two *ḥukms* or just one?

398. He said: One *ḥukm*.

399. I said: Then I will ask you.

400. He said: Please ask.

401. I said: Do you allow any scope for disagreement?

402. He said: No.

403. I said: Do you know any of the great Muslims whom you have met who gave *fatwās*, whether they lived [for long time] or died, and who sometimes disagreed on some matters they reported from those before them?

404. He said: Yes.

405. I said: Say about them whatever you like.

406. If you said: They hold views which they are not allowed to.

407. I said: You have now opposed their agreement.

408. He said: Certainly.

409. He said: Please abandon this!

410. I said: Are they permitted to exercise *qiyās*?

411. He said: Yes.

412. I said: If they exercise *qiyās* and disagree, are they allowed to abandon *qiyās*?

413. He said: If I said: No?

414. I said: Then they say: To which matter should we turn?

415. He said: To *qiyās*.

416. I said: They said: We have done this! Do you explain the *qiyās* I employed other than that he employed?

417. He said: They would not be able to put it forward until they met altogether.

418. I said: (Are they to come from) all regions of the world?

419. He said: If I said: Yes?

420. I said: It is impossible that they meet together. And, even if it were possible, they would disagree.

421. He said: If they met together, and did not disagree?

422. I said: Two men [al-Shāfi'ī and his interlocutor] met together, and they disagreed. How would it be, therefore, if more of them met together?

423. He said: One will remind the other!

424. I said: They have done, and each of the disputants claims that what he holds is the [correct] *qiyās*?

425. He said: If I said: Disagreement is possible in this case?

426. I said: You have claimed that the disagreement of each one of the disputants has two *ḥukms*, and you have abandoned your doctrine: the disagreement has only one *ḥukm*?

427. He said: What do you yourself say?

428. I said: Disagreement has two kinds:<sup>71</sup>

429. If there is a matter on which there is a text with a *ḥukm* from Allāh or a *sunnah* of His Messenger, or about which the Muslims are agreed, then not even a single person who knew of any of these [sources] would be allowed to oppose it.

430. If there is a matter on which there is no judgement of any of these [sources], the people of knowledge can apply *ijtihād* regarding that matter, by seeking a resemblance to one of these three kinds of sources.

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<sup>71</sup> See also *al-Risālah*, pp. 560-600.

431. Whenever those who have the right to exercise *ijtihād* have exercised *ijtihād*, they are allowed to make a pronouncement (legal effect) on the basis of that about which they found the indications, in that it is consonant with the Qur'ān or *sunnah* or *ijmā'*.

432. If there is an ambiguous matter where two different *ḥukms* are conceivable, and he exercises *ijtihād*, and his *ijtihād* contradicts the *ijtihād* of another, [then] he is allowed to have one opinion, and the other is allowed to have a different one. But this rarely occurs when it is properly considered.

433. He said: What is your proof for what you have said?

434. I said to him: An inference from the Qur'ān, *sunnah* and *ijmā'*.

435. He said: Could you mention the difference between two *ḥukms* governing disagreement?

436. I said to him: Allāh the Exalted says: "Be not like those who are divided amongst themselves and fall into disputation after receiving clear signs".<sup>72</sup>

437. And He says: "Those given the Book only divided after clear evidence had come to them".<sup>73</sup>

438. I think that Allāh blames disagreement in the place in which He establishes proof against them, and does not allow them to [have disputation].

439. He said: I know this, but what is the (other) kind (*wajh*) which reveals to you that it is allowed to have disagreement on what is not found in any text?

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<sup>72</sup> *Āl 'Imrān*: 105.

<sup>73</sup> *Al-Bayyinah*: 4.

440. I said to him: Allāh has imposed upon men the obligation to turn towards the *qiblah* of the Sacred Mosque, saying: "From whencesoever thou startest forth, turn thy face in the direction of the Sacred Mosque; that is indeed the truth from thy Lord. And Allāh is not unmindful of what ye do. So from whencesoever thou startest forth turn thy face in the direction of the Sacred Mosque. And wheresoever ye are, turn your face to there".<sup>74</sup> What would you think if we were on a journey, and disagreed about the direction of the *qiblah*. I think it most probable that the *qiblah* is in one direction, and someone else thinks it most probable that it is in another. What is obligatory for us to do [in this matter]<sup>75</sup>?

441. If you say "the Ka'bah", then that is correct if it is visible, but it is not visible to those at a distance from it. They must seek out which direction it is in as best they can, according to what means there are at their disposal and the strength of certain indications in their minds. When they have done their best, disagreement is allowed to them and each one has performed the obligation which is placed upon him by exercising *ijtihad* in seeking out the truth which is hidden from him.

442. And I said: Allāh says: "Whom you judge fit to act as witnesses"<sup>76</sup> and He says: "two honest (*ʿadl*) men among you".<sup>77</sup> What do you think of a situation where two

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<sup>74</sup> *Al-Baqarah*: 149-150.

<sup>75</sup> *Al-Risālah*. para. 1680.

<sup>76</sup> *Al-Baqarah*: 282.

<sup>77</sup> *Al-Ṭalāq*: 2.

witnesses give testimony before two judges in person. These two witnesses are just according to one of the judges, but according to other they are not?

443. He said: The one who says that both of them are *‘adl* has to accept their testimony, and the one who says they are not *‘adl* has to reject them.

444. I said to him: This is disagreement?

445. He said: Yes.

446. Then I said to him: I think in that event that you have made two *ḥukms* (rules) for disagreement.

447. Then he said: This occurs only in matters which are hidden. And each one, even though he differs in his action and his rules, has performed what is required of him.

448. I said: This is what we say.

449. And I said to him: Allāh the Exalted says: "Which two just men among you [shall judge], as an offering to be brought to the Ka‘bah".<sup>78</sup> If two just men determine at such a place such a thing, and two other just men at such a place determine more or less than the former, each (of them) has exercised *ijtihād* and performed what is required of him, even though they differ [in the result].

450. He also says: "As for those wives from whom you fear disobedience, admonish them and send them to beds apart and beat them. Then if they obey you, take no further action against them. Allāh is High, Supreme".<sup>79</sup>

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<sup>78</sup> *Al-Mā'idah*: 95.

<sup>79</sup> *Al-Nisā'*: 24.

451. And He says: "If you fear that the two may not be able to keep within the bounds set by Allāh, it shall be no offence for either of them if the wife ransom herself".<sup>80</sup>

452. What would you think if two wives behaved in the same manner, and the husband of one of them feared her disobedience, while the other did not?

453. He said: The one who is afraid is allowed to warn her and stay away from her and to beat her. And the other is not allowed to beat her.

454. And I said: The one who fears that his wife cannot keep Allāh's bounds is allowed to take action against her, and the other [who does not fear his wife's disobedience] is not allowed, though their [wives'] actions are the same?

455. He said: Yes.

456. (Al-Shāfiʿī) said: He said: If I accepted this, then perhaps someone else would oppose me and you, and would not accept this from us. Therefore, where is the *sunnah* which indicates the possibility of disagreement?

457. I said: °Abd al-°Azīz b. Muḥammad informed us on the authority of Yazīd b. °Abd Allāh b. al-Hād, on the authority of Muḥammad b. Ibrāhīm, on the authority of Busr b. Saʿīd, on the authority of Abū Qays *mawlā* of °Amr b. al-°Āṣ (on the authority of °Amr b. al-°Āṣ) that he heard the Messenger of Allāh may Allāh bless him and grant him peace saying: "When a judge judges and exercises *ijtihād* and gives a right judgement, he will have two rewards, but if he judges and exercises *ijtihād* and errs in his judgement, he will have one reward".

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<sup>80</sup> *Al-Baqarah*: 229.



458. Yazīd b. al-Hād said: I related (*ḥaddathu*) this *ḥadīth* to Abū Bakr b. Muḥammad b. °Amr b. Ḥazm and he said: Abū Salamah related it to me in this way on the authority of Abū Hurayrah.

459 He said: And what is it?

460. I said: What we have described, that those judges and *muftīs* until today have disagreed on some of the judgements and *fatwās* they have given, although they only give judgement and *fatwās* according to what seems to them permitted. And this is, in your point of view, *ijmāʿ*. How can it be *ijmāʿ* when there is disagreement found in their practices?

## THE EXPLANATION OF ALLĀH'S OBLIGATIONS<sup>81</sup>

Al-Rabī<sup>c</sup> b. Sulaymān informed us that al-Shāfi'ī said:

461. Obligations made by Allāh in the Qur'ān are of two kinds.

462. Firstly, what [Allāh] explains in the Qur'ān the details of certain obligations, so the Qur'ān does not need further interpretation or reports [*khavar*] [to explain it].<sup>82</sup>

463. The other is where He lays down His obligation in the Qur'ān and explains it on the tongue of His Prophet may Allāh bless him and grant him peace.<sup>83</sup>

464. Allāh confirmed in the Qur'ān the obligatory nature of what the Messenger of Allāh has made obligatory by saying:

"And whatsoever the Messenger gives you, take. And whatsoever he forbids you, abstain from".<sup>84</sup>

465. And by His saying, may His name be blessed,

"But no, by thy Lord: They will not believe until they make you the judge regarding any disagreement among them; then they find in themselves no impediment touching thy verdict, but shall surrender in full submission."<sup>85</sup>

466. And by His saying,

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<sup>81</sup> See *al-Risālah*. pp. 147-209.

<sup>82</sup> *Al-Risālah*. para. 52.

<sup>83</sup> *Al-Risālah*. para. 153.

<sup>84</sup> *Al-Hashr*: 7.

<sup>85</sup> *Al-Nisā'*: 65.

"It is not for true believers-men or women- to make that choice in their affairs if Allāh and His Apostle decree otherwise."<sup>86</sup>

and other passages in the Qur'ān with this meaning.

467. Therefore, anyone who accepts [something] on the authority of the Messenger of Allāh may Allāh bless him and grant him peace, has accepted it on the basis of what has been laid down by Allāh.<sup>87</sup>

468. Al-Shāfi'ī said: The obligatory orders are united in that they are confirmed as laid down. Then, the legal application [of the *farā'id*] becomes divided as Allāh has divided, and as His Messenger may Allāh bless him and grant him peace did.

469. They were divided as he divided and they were united as he united them. One branch of the *sharī'ah* cannot be compared with another.<sup>88</sup>

470. And the first thing which we shall begin with are the details about the *ṣalāt*.

471. We find that *ṣalāt* is obligatory for all mature persons, not mentally ill, but not for menstruating women during their menstruation.

472. Then we find that the obligatory (*farīḍah*) and voluntary (*nāfilah*) *ṣalāts* are in agreement in that it is not allowed to begin either of them without having done ablution with water (*wuḍū'*), whether at home or on a journey, as long as water is available; and by *tayammum* ("dry" ablution) on a journey if water is not available, or at home [for the same reason], or if a person is sick and unable to perform *wuḍū'*

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<sup>86</sup> *Al-Aḥzāb*: 36.

<sup>87</sup> See *al-Risālah*. paras. 56-87, 96-103, 269-309, 536-541.

<sup>88</sup> Cf. *Ikhtilāf Mālik*. p. 212.

through fear of harm or death because of *wuḍū'*, or fear of an illness increasing (getting worse).

473. We find that both obligatory and recommended *ṣalāts* are in agreement in that they cannot be performed unless in the direction of the Ka'bah, while the performer is at home or dismounted on the ground.

474. But we find that they are different when they are done by travellers, who perform the recommended *ṣalāt* while riding on an animal may turn in the direction in which their riding animal is facing [and] make gestures representing *rukū'* and *sujūd*, but we do not find this [concession] for those performing an obligatory *ṣalāt* under any circumstances, except in the one instance of fear of attack.

475. We find that if one performs an obligatory *ṣalāt* when able to stand up, the *ṣalāt* will be valid only if he is standing. Whereas those who are performing a recommended *ṣalāt*, may do so sitting.

476. We find that he who performs an obligatory *ṣalāt* should perform it standing and in the set time; if he cannot [stand], he should perform it sitting. If he cannot sit, he should perform it lying down [and] should prostrate [*sujūd*] if he can, or if he cannot, just gesture.

477. And we find that *zakāt* is an obligatory act which has some points in common with *ṣalāt* and some points which differ with *ṣalāt*. We find that *zakāt* is an obligation [on some people] and not on others. When it is obligatory, there is nothing but to fulfil what is required whatever the circumstances. It does not vary with excuse as performing the *ṣalāt* varies with regard to standing or sitting.

478. We find that if a person has property in his hands the like of which is required for paying *zakāt*, but has a debt equal [to the amount of his property], he is not required to pay *zakāt*, and nothing is exacted [from him].

The *ṣalāt*, however does not cease [to be obligatory] whatever the circumstances, and he must perform it in whatever manner he can.

Al-Rabī<sup>c</sup> said:

479. Al-Shāfi<sup>c</sup> has another opinion. If he is indebted to the sum of twenty *dinārs*, but also has property equivalent to his debt, he is required to pay *zakāt*, because Allāh says,

"Take alms from their wealth, so that they may thereby be cleansed and purified".<sup>89</sup>

For, if he gives these twenty [*dīnārs*] to another, his gift will be valid; if he gives it as *ṣadaqah* (charitable gift), his *ṣadaqah* will be valid; and if it perishes, it will be considered as having been his wealth. Since all the laws governing it prove that it is part of his wealth, he must pay *zakāt* on it on account of the verse.

Al-Shāfi<sup>c</sup>, may Allāh bless him said:

480. We find that a woman who has property is not required to pray during the days of menstruation, but *zakāt* is required of her. And the same applies also to a child and those whose reason is overcome.

### [BĀB AL-ṢIYĀM]

Al-Shāfi<sup>c</sup>, may Allāh, the High bless him, said:

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<sup>89</sup> *Al-Tawbah*: 103.

481. We find that the fast (*ṣiyām*) is an obligation at a certain time, as the *ṣalāt* is an obligation at a certain time.

482. Then we find regarding the fast that travellers have been given the concession (*rukḥṣah*) to break the fast even though they are able to fast at that stated time. Then, they have to make it later. *Ṣalāt*, however, is not like this, for no one is given the concession (*tarkhīṣ*) to delay the *ṣalāt* from its time to another day. [Furthermore] no one is given the concession to shorten the fast, as one is given the concession to shorten the *ṣalāt*. Fasting does not vary according to the differences in a person's circumstances as to whether he is sick or in health.

483. We find that if someone has sexual intercourse during Ramaḍān, and he is able to free a slave he should do so, and if he has sexual intercourse during the pilgrimage, he has to slaughter a she-camel (*badanah*); and if he has sexual intercourse during the prayer, he has to ask for Allāh's forgiveness, and no atonement (*kaffārah*) is exacted. Having sexual intercourse in all of these situations is forbidden (*muḥarram*). Then, much of intercourse is forbidden with no atonement laid down.

Then we find that if he has sexual intercourse during certain of obligatory types of fasting, such as when making up Ramaḍān, or by way of *kaffārah* for killing, or *ḡihār*, there is no *kaffārah* for this. However, he is required to make up a day [i.e. to repeat the day] in all of these cases.

484. We find that unconscious persons and menstruating women are not required to observe either fast or *ṣalāt*. But when an unconscious man regains consciousness, or a menstruating woman becomes pure they are required to make up the days of fasting they have missed.

There is no requirement for a menstruating woman to make up for the *ṣalāt* [which she has missed]. But in our doctrine, an unconscious man is required to make up the *ṣalāt*.

485. I have found that the pilgrimage is an obligation upon a particular category of people, namely those who have the means to go there.

486. Then I found that the pilgrimage is in agreement with the *ṣalāt* on one matter, and in disagreement on other matter.

487. As far as what differs is concerned, he is allowed in *ṣalāt*, to wear ordinary clothes, whereas this is forbidden to a pilgrim.

488. A pilgrim is allowed to speak intentionally, whereas someone who is praying is not allowed to. A man will invalidate his *ṣalāt* [by talking while performing *ṣalāt*], and so cannot continue doing that prayer. He must restart a new prayer instead, but he is not required to pay any *kaffārah*.

If a person invalidates (*yufsidu*) his pilgrimage he must nonetheless continue with it even though it is invalid (*fāsid*). He is not allowed to do anything else, but he must perform another one in its place and make an offering.

489. The pilgrimage is imposed at a certain time, and the *ṣalāt* is imposed at a certain time. If a man makes a mistake involving the time, his pilgrimage is invalid.

Then, I found that both the pilgrim and the worshipper have been ordered to begin the *ṣalāt* at a certain time. If he begins before the time, his *ṣalāt* is invalid. If the pilgrim begins [the pilgrimage ceremonies] before the time, his pilgrimage is still valid.

490. I found that the *ṣalāt* has a beginning and an end. I found its beginning is *takbīr* and its end is *taslīm*. And I found that, if he did what invalidates the *ṣalāt* in between the beginning and the end, it will invalidate all of it.

And I found that the pilgrimage has a beginning and an end, and several divisions after that. Its beginning is *iḥrām* and the end of its division is casting stones (*ramy*), shaving the head (*ḥilāq*) and sacrifice (*naḥr*).

When he has done this, according to our doctrine and the indication of the *sunnah*, he will abandon all the *iḥrām* except only having sexual intercourse with women. And according to others, [he will abandon all the *iḥrām*] except for women, perfume and hunting.

Then I found in this circumstance that if he has sexual intercourse before women become *ḥalāl* (*taḥallul*) to him, he has to slaughter a she-camel. However, it does not invalidate (*mufsid*) his pilgrimage.

If he does not have sexual intercourse until he has performed *ṭawāf* of the Ka'bah, women are permitted to him as is everything else which was forbidden during the *ḥajj* while he was carrying out the rites of his pilgrimage, including spending the night (*baytūtah*) at Minā, stoning [the *Jamrahs*] and the farewell *ṭawāf*, doing all of this in a state of being *ḥalāl*, having come out of the state of [being] *iḥrām* for the pilgrimage. However, he cannot do anything in his *ṣalāt* except in a state of *iḥrām* for the *ṣalāt* which persists during the entire prayer.

491. And I found that he has been ordered to do things during the pilgrimage which, if he leaves them out, entails the substitution of a *kaffārah*, such as sacrifice, fasting, charity (*ṣadaqah*) and another pilgrimage.



And I found that he has been ordered to do many things in the *ṣalāt*. There are two kinds, either he leaves something fundamental of the *ṣalāt* which invalidates his *ṣalāt*, [in this case] he cannot pay *kaffārah* or other things, but by starting afresh a new *ṣalāt*; or if he leaves another thing commanded, other than the fundamental of *ṣalāt*, he has left the meritorious act, and the *ṣalāt* will be valid, and no *kaffārah* is required of him.

492. Then the pilgrimage has another time, that is circumambulation [of the Ka'bah] after the sacrifice when women become *ḥalāl* to him. Then this last is followed by leaving Minā (*al-naḥar min Minā*), and the farewell [circumambulation]. He is given a choice in leaving, if he likes, he may do so early after two days, or if he likes, he may delay it.

Al-Rabī<sup>°</sup> b. Sulaymān informed us that al-Shāfi'ī<sup>°</sup> said:

493. Ibn 'Uyaynah informed us through an *isnād* going back to the Messenger of Allāh, may Allāh bless him and grant him peace, that he said:

"Let not people hold to something against my wishes, for I only make permitted what Allāh has made permitted, and I only make prohibited what Allāh has made prohibited".

494. Al-Shāfi'ī<sup>°</sup> said: The *isnād* of this *ḥadīth* is interrupted (*munqaṭī'*). We know very well Ṭāwūs's (d. 106) *fiqh*. Were this *isnād* confirmed as coming from the Messenger of Allāh may Allāh bless him and grant him peace, in it is evidence according to what I have described, if Allāh wills.

He said, "Let not people hold to something against my wishes (*lā yumsikanna al-nās 'alayya bi shay'*), he did not say here; "do not adopt from me (*lā tamassakū 'annī*)".

Rather he [the Prophet] has ordered people to hold fast to what is imposed on his authority, and Allāh, the Exalted ordered the same.

495. Al-Shāfi'ī said: Ibn 'Uyaynah informed us on the authority of Abū al-Naḍr (d. 127), on the authority of 'Ubayd Allāh b. Abī Rāfi', on the authority of his father that the Messenger of Allāh may Allāh bless him and grant him peace said:

"Let me not find any of you lying on his bed, who, when an order which I have ordered or forbidden comes to him says: "We do not know this, we follow what we find in the Book of Allāh".<sup>90</sup>

496. We have been ordered to follow what he has ordered and to avoid what he has forbidden. Allāh has imposed that upon all His creatures in His Book. Nothing is found in people's possession but what they adhere to on the authority of Allāh the High, then on the authority of His Messenger may Allāh bless him and grant him peace, and then through indications.

497. However, his saying- if he said it- "Let not people hold to something against my wishes (*lā yamsikann al-nās 'alayy bi shay'*)" reveals that the Messenger of Allāh was a model (*qudwah*). He has, however, special prerogatives which were not allowed to the people although allowed to him, and things which were not forbidden to the people although forbidden to him. Therefore he said, "people should not adhere to everything which is [specifically] imposed on me of the things which were allowed to me or forbidden to me and not to other people. If it is forbidden or it is allowed to me, and not to other people, they should not hold to them.

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<sup>90</sup> *Al-Risālah*. paras. 295-6, 622, 1106-7; *Tartīb Musnad*. vol. I, p. 20.

498. For instance, Allāh the High, permitted to him the number of wives which He wished or to marry a woman who had gifted herself to him. Allāh says:

"[It is] exclusive to you not for the other believers".<sup>91</sup> No one has the right to say that the Messenger of Allāh may Allāh bless him and grant him peace simultaneously wed more than four wives, or that he married a woman without a dowry, or he took *ṣafī*<sup>92</sup> from *ghanīmah* (spoils). That was exclusively for the Messenger of Allāh may Allāh bless him and grant him peace, because Allāh the High clarified in the Qur'ān and through the tongue [word] of His Messenger may Allāh bless him and grant him peace that they were exclusively for him, not for others.

499. Allāh enjoined him to give his wives the choice either staying with him [as wives] or being divorced. [In this case] no one is allowed to say, "I swear I shall give my wife the choice as Allāh the High imposed upon His Messenger may Allāh bless him and grant him peace.

500. And this is the meaning of the Prophet's saying- if he said it, "Let not people hold to something against my wishes, for I will not declare lawful except what Allāh declared lawful, and I will not prohibit except what Allāh has prohibited (*lā yumsikann al-nās 'alayy bi shay', fa innī lā uḥill lahum illā mā aḥall Allāh, wa lā uḥarrim 'alayhim illā ma ḥarram Allah*)".

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<sup>91</sup> *Al-Aḥzāb*: 50.

<sup>92</sup> *Ṣafī* is something valuable which the Prophet had chosen for himself before the distribution, such as sword, horse or slave woman. See *al-Jurjānī*, *al-Ta'rifāt*. p. 134; *al-Tahānawī*, *Kashshāf*. vol. I, p. 869.

501. In that manner, the Messenger of Allāh may Allāh bless him and grant him peace acted. And also in that manner He enjoined on him to follow what He revealed to him. And we bear witness that he followed it.

502. Therefore, when there is no revelation (*wahy*) on any question, Allāh the High has imposed through the revelation adherence to His [Prophet's] *sunnah*. Whoever accepts [the authority of] the Prophet, is doing so by the command of Allāh.

503. Allāh the High says:

"And whatsoever the Messenger gives you, take. And whatsoever he forbids you, abstain from".<sup>93</sup>

504. He, the Exalted and the High also says:

"But no, by thy Lord: they will not believe until they make you the judge regarding the disagreements among them; then find in themselves no impediment touching your verdict, but shall surrender in full submission".<sup>94</sup>

505. We have been informed on the authority of Ṣadaqah b. Yasār, on the authority of °Umar b. °Abd al-°Azīz that he asked [people] at Madīnah, and it was agreed that pregnancy will not be apparent in less than three months.

506. Al-Shāfi'ī said: Allāh the Exalted and the High has put His Prophet may Allāh bless him and grant him peace vis-a-vis His Book and His religion in that relation which He has explained in His Book.

507. The imposition upon all people is that they have to be aware that the Prophet would not say regarding what Allāh has revealed other than on the basis of what He

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<sup>93</sup> *Al-Hashr*: 7.

<sup>94</sup> *Al-Nisā'*: 65.

has revealed to him, and [that] he would not oppose Allāh's Book, [and that] the Prophet expounded on Allāh's behalf the meaning of what Allāh intended.

508. And the explanation of that can be seen in the Book of Allāh.

509. Allāh the High says:

"And when Our clear revelations are recited unto them, those who do not anticipate the meeting with Us say: "Bring a Qur'ān other than this or change it". Say [O Muḥammad]: "It is not for me to change it of my own accord. I merely follow what is being revealed to me".<sup>95</sup>

510. Allāh said to His Prophet may Allāh bless him and grant him peace;

" [O Muḥammad] follow that which is revealed to you from your God."<sup>96</sup>

511. He says the like of this in more than one verse.

512. He the Exalted and the High says:

"Whoever obeys the Apostle obeys Allāh".<sup>97</sup>

513. He says:

"But no, by thy Lord: They will not believe..."<sup>98</sup>

514. Al-Shāfi'ī, may Allāh, the High bless him said: al-Darāwardī informed us on the authority of ʿAmr b. [Abī] ʿAmr, on the authority of al-Muṭṭalib b. Ḥanṭab that the Messenger of Allāh said:

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<sup>95</sup> *Yūnus*: 15.

<sup>96</sup> *Al-Anʿām*: 106.

<sup>97</sup> *Al-Nisāʾ*: 80.

<sup>98</sup> *Al-Nisāʾ*: 65.

"I did not leave anything which Allāh, the High has enjoined on you, but that I have enjoined it on you. And I did not leave anything which He forbids you, but that I have forbidden it to you".<sup>99</sup>

Al-Rabī<sup>c</sup> informed us saying: al-Shāfi<sup>c</sup> informed us saying:

515. Sufyān b. °Uyaynah informed us on the authority of Sālim Abū al-Naḍr, on the authority of °Ubayd Allāh b. Abī Rāfi<sup>c</sup>, on the authority of his father that the Messenger of Allāh may Allāh bless him and grant him peace said:

"Let me not find any of you lying on his bed, who, when an order which I have ordered or forbidden comes to him says: "We do not know this, we follow what we find in the Book of Allāh".

516. Allāh has imposed *ṣalāt*, *zakāt*, *ḥajj* in general terms in His Book, then the Messenger of Allāh explained the meaning of what Allāh, the High meant in terms of the number of the prayers and its times, the number of bowings (*rukū<sup>c</sup>*), and prostratings (*sujūd*), the way of performing *ḥajj*, what one should do during *ḥajj* or avoid, and which property *zakāt* is to be taken from and how much and when.

517. Allāh the Exalted and the High says:

"And the male and female thief, cut off their hands".<sup>100</sup>

518. And He the Exalted and the High says:

"The adulteress and the adulterer shall each one be given one hundred lashes".<sup>101</sup>

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<sup>99</sup> *Al-Risālah*. paras. 289-306.

<sup>100</sup> *Al-Mā'idah*: 38.

<sup>101</sup> *Al-Nūr*: 3.

519. If we were to follow the Qur`ānic text, we would amputate the hands of all those who can be called "thieves". And we would flog all those who can be called "adulterers" one hundred lashes.

520. Since the Prophet may Allāh bless him and grant him peace amputated hands for a quarter of a *dinār*, whereas he did not cut off hands for less, and he stoned two free married adulterers, whereas he did not flog them, we deduce that Allāh, the Exalted and the High intended amputation and flogging only for some thieves, not others, and only for some fornicators (*zunāh*), not others.<sup>102</sup>

521. A Similar case which is no way different is *al-mash`alā al-khuffayn* (wiping over boots).

522. Allāh the Exalted and the High says:

"O Believers, when you rise to pray, wash your faces and your hands as far as the elbows, and wipe your heads and [wash] your feet to the ankles."<sup>103</sup>

523. Since the Prophet may Allāh bless him and grant him peace wiped his boots (*khuffayn*), we deduce that Allāh's imposition of washing the feet (*ghasl al-qadamayn*) is required only of some people, not of others. And *mash`* is permitted to those who put boots on after full purification (*kamāl al-ṭahārah*) on the ground of the *sunnah* of the Messenger of Allāh may Allāh bless him and grant him peace, because he would not wipe [his boots] while the obligation is to wash the feet as well as that he would not withdraw the amputation of hands from some thieves, and the hundred lashes from

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<sup>102</sup> *Al-Risālah*. paras. 223-7, 332-5, 375-382, 616, 646-9, 682-685, 1619-1920.

<sup>103</sup> *Al-Mā'idah*: 6.

some adulterers, when the obligation is to flog [the adulterer] and to amputate [the hands of the thief].<sup>104</sup>

524. If one goes on to say that some of the Prophet's Companions have narrated that he said; the Qur'ān [concerning the obligation of *wuḍū'*] came earlier than the wiping of the boots, since

525. *Al-Mā'idah* was revealed before *mash* which was confirmed in the Hijāz during the battle of Tabūk, whereas *al-Mā'idah* was revealed before that date.

526. If someone should claim that there was a requirement of *wuḍū'* prior to the *wuḍū'* in which the Prophet rubbed his boots and there was a requirement of *wuḍū'* revealed after that which abrogated the wiping of the boots,<sup>105</sup>

527. let him bring us the imposition of two *wuḍū'*s in the Qur'ān. We only know one imposition of *wuḍū'* [in the Qur'ān].

528. If he claims that the Prophet wiped [*māsaḥa*] before *wuḍū'* was imposed upon him, he has claimed that the *ṣalāt* was performed without *wuḍū'*. We know of no such *ṣalāt* ever without *wuḍū'*.

529. Which verse [part] of the Qur'ān (*kitāb*) is earlier than the wiping of the boots (*al-mash 'alā al-khuffayn*)?

530. *Mash* as we have described is deduced from the *sunnah* of the Messenger of Allāh. All of what the Messenger of Allāh practised [*sanna*] of Allāh's obligations is similar to what we have described regarding the thief, the fornicator and other cases.

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<sup>104</sup> *Al-Risālah*. paras. 220, 1610-1621; *Ikhtilāf al-Ḥadīth*. p. 57

<sup>105</sup> *Ikhtilāf al-Ḥadīth*. p. 60.



531. Al-Shāfiʿī said: A *sunnah* never contradicts the Qurʾān,<sup>106</sup> and Allāh, the High is the one who guides (*muwaffiq*).

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<sup>106</sup> *Al-Risālah*. paras. 278-281, 286-309, 326, 419, 458, 479, 480, 537, 606-7, 629, 631-2, 637-8, 644, 1613-4.

## THE NATURE OF THE PROPHET'S PROHIBITION<sup>107</sup>

Al-Shāfi'ī, may Allāh, the High bless him said:

532. The basis of prohibition (*aṣl al-nahy*) from the Messenger of Allāh may Allāh bless him and grant him peace is [that] every thing which he [the Prophet] forbids is unlawful (*muḥarram*), unless there is an indication from him that shows that he prohibited that thing in a sense other than complete prohibition (*tahrīm*); either he intended by it prohibition in certain things, apart from others, or he may have intended one to avoid it (*tanzīh*), or he may have been giving instruction of good behaviour (*adab*) and option (*ikhtiyār*).

533. We would draw a distinction between the Prophet's prohibitions on evidence from the Messenger of Allāh may Allāh bless him and grant him peace alone or a matter which the Muslims do not dispute. We know that all the Muslims would not be unaware of a *sunnah*, though some of them might be.

534. One thing most of the *‘āmmah* do not differ about is that the Messenger of Allāh forbade as unlawful (*tahrīm*), the exchange of gold for silver except hand to hand. He also prohibited the exchange of gold for gold except equal weight for equal weight, hand to hand. And he forbade two contracts of sale in a single contract.

535. We also say so, and the generality [of scholars] (*‘āmmah*) agree with us, that when two persons make an exchange of gold for silver, or gold for gold and do not exchange the price and thing before they leave each other, that the contract is invalid (*mafsūkh*).

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<sup>107</sup> There is also a section in *al-Risālah* which deals with the different kinds of prohibition laid down by the Prophet under the subtitle: *Ṣifat Nahy Allāh wa Nahy Rasūlih*, pp. 345-357.

536. Our proof is that when the Prophet may Allāh bless him and grant him peace prohibited this, it became unlawful (*muḥarram*).

537. When two men make two contracts of sales in one contract of sale, both exchanges are invalid (*mafsūkh*) as soon as the contract is made. For example of [such an invalid] contract is attempted when [one party says to the other], "I will sell to you on the basis that you sell to me. [This is invalid] because the contract is concluded on the basis of the two parties taking possession from the opposite number of something which is not then in his possession.

538. The Prophet may Allāh bless him and grant him peace forbade contracts involving uncertainty (*bay' al-gharar*). An example of this is when I say to you: This article of mine is yours for ten in cash [now], or fifteen later. This has required him to take possession and [to pay] one of the two prices, for the sale has not been concluded for a known price. There are many aspects involved in the contract of *gharar*. This will be sufficient for us. The Prophet may Allāh bless him and grant him peace [also] forbade the marriage of *shighār*<sup>108</sup> and *mut'ah* (temporay marriage).

539. Whatever a sale concluded for something prohibited, it does not become my possession based on the Prophet's prohibition. Because I have possessed something prohibited (*muḥarram*) by the means of prohibited transaction. We, therefore apply the prohibitions as the same level if there is no such distinctive indication from the Prophet. So, we declare these things invalid as well as *mut'ah* and *shighār* just as we invalidate two sales in a single contract.

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<sup>108</sup> This is one type of marriages practiced during the Pagan time which was abolished by Islam. This marriage is illustrated as a man will marry another man's daughter or sister on condition the latter will marry the former's daughter or sister without paying any dowry. See *Tartīb Musnad*, vol. II, p. 9.

540. There are things the Messenger of Allāh may Allāh bless him and grant him peace prohibited in certain circumstances, so we conclude from his *sunnah* that he intended the prohibition to operate in those precise circumstances. For example Abū Hurayrah relates from the Prophet may Allāh bless him and grant him peace that he said, "let none of you make an engagement of marriage in competition with his brother's proposal".<sup>109</sup>

541. If it were not that proof existed from him, the prohibition in this case would be a prohibition of the first kind [*ḥarām*]. Therefore, it would be unlawful for the other to make a proposal of marriage if a man had already proposed to that woman.

542. But when Fāṭimah bint Qays said; "The Messenger of Allāh said to me, "When you have completed the waiting period (*‘iddah*), tell me". When she finished her waiting period, she told him that Mu‘āwiyah and Abū Jahm had made proposals of marriage to her. Then the Prophet may Allāh bless him and grant him peace said: "As far as Mu‘āwiyah is concerned, he is a vagabond - a poor wretch-who has no property. And as for Abū Jahm, he would not leave his stick from his shoulder. Rather, marry Usāmah b. Zayd". She said: I disliked him. The prophet said, "Marry Usāmah". I married him, then Allah blessed the marriage abundantly, and I was happy with him". [From this report], we deduce that he [the Prophet] did not forbid making a marriage proposal, or a marriage proposal in competition with somebody else; but what he forbade is making a marriage proposal when the woman has already given her consent [to someone else] and the only thing remaining is the marriage contract. If another

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<sup>109</sup> *Al-Risālah*, para. 847.

man were to make a proposal of marriage then it would spoil things either for the one who had been accepted, or for the woman or for both of them together.<sup>110</sup>

And he might spoil the engagement of both of them, and then nothing happens between the woman and the man who is now proposing to marry her.

543. Had Fāṭimah informed him that she had accepted one of them, he would not have made a proposal of marriage to her -Allāh willing- on behalf of Usāmah. However, she informed him about a marriage proposal and sought his advice. Therefore, from her *ḥadīth*, there is an indication [proof] that she had neither accepted nor rejected.

544. When a woman is in this situation, it is permissible [to some one else] to make proposal of marriage to her. But, when a woman has accepted the first man and it occurs to her to ask [her guardian] to marry her to that man, she may not be offered a proposal of marriage when she has given consent to a previous offer such that if her *walī* gave her in marriage that would result in a lawful marriage.

545. Supposing someone says: Her situation after she has agreed is different from her situation following the proposal but before she agrees. So also her situation when she is proposed to before she agrees differs from her situation before she is proposed to. Similarly, if the proposal is repeated after she had [first] refrained from speaking and kept silent, when silence cannot always be taken as acceptance.

546. No view in my opinion is permissible except what I have mentioned by inference. If it were not for the indication provided by the *sunnah*, once she has been

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<sup>110</sup> *Al-Risālah*. paras. 847-862.

proposed to, she would be prohibited to anyone other than the first man who had made a proposal of marriage until that offer was withdrawn.

547. The prohibition of the Prophet may Allāh bless him and grant him peace is divided into two categories.

548. Whatever he prohibited is forbidden except where something happens that makes it permitted (*ḥalāl*).

If a man happens to do a forbidden thing, it would not make the forbidden permissible. It still remains as originally unlawful, because it did not come through a way which will make it permissible.

549. For example, people's properties are forbidden to others; and women are forbidden to men, unless a man take another's property into his possession by lawful means through a contract of sale (*bayʿ*), or a gift (*hibah*) or some other means. And women are unlawful except through a valid marriage or legitimate slave ownership (*milk yamīn*).<sup>111</sup>

550. If a man purchases something in a forbidden sale, the forbidden item he has purchased still remains forbidden, because he has not acted in a way that legitimizes his ownership, and it will not make the forbidden [thing] permissible. If he marries in a forbidden manner, the unlawful woman does not become lawful to him.

551. What I have been forbidden from in terms of doing something with something in my possession or in terms of something which is permitted to me and is not the

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<sup>111</sup> *Al-Risālah*, para. 931.

possession of anyone else, is a prohibition of choice (*nahy al-ikhtiyār*), and we are not supposed to commit it.

If someone intentionally commits that action, he is disobedient by doing that action, and is considered to have done other than the preferable (*ikhtiyār*). However, his property would not be unlawful nor what is permitted to him.

552. It is related from him [the Prophet] that he ordered an eater to eat what is near to him, and not to eat from the top of the dishes (*ra's al-tharīd/al-ta'ām*)<sup>112</sup> and not to sleep (*ta'rīs*)<sup>113</sup> on the open road.

If he eats what is not near to him, or the top of dishes or sleeps on the open road, he is sinful by that action which he has committed if he is aware of the Prophet's prohibition, but it does not make those dishes forbidden to him.

553. This is because the food is not the same as the action, and he needs do nothing to make it permissible. The food is *ḥalāl*, and what is *ḥalāl* does not become *ḥarām* for him because of some disobedience regarding eating from the wrong place.

554. Similar to this is the prohibition against sleeping on the open road. The road is permitted to him, but he is considered disobedient by sleeping on the road, and his disobedience does not forbid him from using the road.

555. What I said was, that he will be disobedient [by these actions], if there is proof to the effect that that man knew that the Prophet may Allāh bless him and grant him peace had forbidden them.

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<sup>112</sup> *Al-Risālah*. para. 949.

<sup>113</sup> *Al-Risālah*. para. 950.



## CONCLUSION

Having discussed and analysed al-Shāfi'ī's views on *ḥadīth* and his work *Jimā' al-ʿIlm*, there are some remarks that could be drawn from this study.

Al-Shāfi'ī's ability to establish a new *madhhab* resulted from his series of travels and studying under different teachers of different approaches. The combination of the school of Hijāz (*ahl al-ḥadīth*) and the school of Irāq (*ahl al-ra'y*) have made al-Shāfi'ī an eclectic. His *madhhab*, therefore, pays attention mostly to the Qur'ān and *sunnah* of the Prophet and restricts the use of *qiyās*. *Al-Risālah* for instance is the outcome of this approach.

The position of *ḥadīth* in Islam has passed through different stages. In the beginning of Islam and prior to al-Shāfi'ī's time, *ḥadīths* were well accepted. But by al-Shāfi'ī's time the position of *ḥadīth* or the *sunnah* of the Prophet as a source of Islamic jurisprudence had been challenged by some groups. *Jimā' al-ʿIlm* for example, is a significant evidence for the existence of this phenomenon. *Ḥadīths* were either entirely or partly rejected by certain groups. *Ahl al-kalām* are recognised as a group which repudiated the entire *ḥadīths*. *Ahl al-kalām* in al-Shāfi'ī's writings, according to most authors refers to the Mu'tazilah. Other groups are also significant such al-Rawāfiḍ, al-Khawārij and others.

On the other hand, those who rejected a part of the *ḥadīths*, i.e. *khābar al-wāḥid*, are referred to as the followers of *fiqhī madhhab*. This rejection may be due to their different approach.



Al-Shāfi'ī has treated these two rejections in his writings. Arguments in favour of *ḥadīth* as a whole, which should be accepted and proofs in favour of *khābar al-wāḥid* to be recognised and accepted, are well documented in his writings, such as *al-Risālah*, *Jimā' al-ʿIlm*, *Ikhtilāf al-Ḥadīth* and *Ikhtilāf Mālik wa al-Shāfi'ī*.

The concept of the *sunnah* of the Prophet (*sunnat al-Nabī*) is very significant in al-Shāfi'ī's discussion. His thesis argues that once a *ḥadīth* of the Prophet is definitely confirmed as coming from the Prophet, it must be accepted. Whatever others, i.e. the Companions or the Successors, may have said or done which opposes it does not affect it. In other word, *āthār* of others cannot set aside the *ḥadīth* of the Prophet. Furthermore it would not strengthen it, even though it agrees with it.

Differences of rulings held by different *madhhab* are not solely matters of disagreement. Disagreements on the branches of law (*furū'*) resulted from a different approach to the sources of law. An example is the acceptance of *khābar al-wāḥid*. Because of disagreement as to whether or not *khābar al-wāḥid* should be accepted, many different rulings on certain issues have been produced by *fuqahā'*. The reciting of *Basmalah* for instance, varies. Some say it loudly and others not. Certain *fuqahā'* do not accept that the *basmalah* should be recited aloud for this is opposed to certain principles they held.

Al-Shāfi'ī was consistent in enforcing the acceptability of *ḥadīths*. Throughout his *uṣūlī* writings, the importance of *ḥadīth*, the obligation to obey the Prophet and the obligation to accept the *ḥadīths* of the Prophet, were dominant and lay at the basis of his writings. *Jimā' al-ʿIlm* is an example of this. His consistency on this matter may reflect the fact that of that time, rationalist movements especially the Mu'tazilah who

gave priority to reason (*‘aql*) were dominant and paid no attention to *ḥadīths*, claiming that they were contradictory to each other. To correct this misunderstanding, al-Shāfi‘ī sought to adopt his approach, reinforcing his views by the constant use of repetition.

As far as *mursal ḥadīths* are concerned, it may be concluded that al-Shāfi‘ī accepted them on certain conditions as laid down in *al-Risālah*. The acceptability of the *mursal ḥadīths* also has contributed to the differences of rulings, since some jurists accept it as an argument, while others do not.

With regard to the seeming differences among *ḥadīths*, al-Shāfi‘ī has offered a method of solving this problem. Disagreements among *ḥadīths* are not just an absolute disagreement. There are principles to be employed in the conduct of this matter, such as whether or not they are *nāsikh* or *mansūkh*, general or particular or others. Whatever they are, the apparent differences among *ḥadīths* may be reconciled according to al-Shāfi‘ī's theory.

As far as *Jimā‘ al-‘Ilm* is concerned, it is a strong evidence to show that history repeats itself, as a phenomenon that took place in history may happen again. For example, if the rejection of *ḥadīths* happened during al-Shāfi‘ī's time (second century of Hijrah), it may happen again in this century. This phenomenon should not happen in the first place if al-Shāfi‘ī's theory and proofs are duly understood.

To emphasise this point again, *Jimā‘ al-‘Ilm* is very important in order to understand the development of Islamic law. If we compare *Jimā‘ al-‘Ilm* and *al-Risālah* in terms of contents, the former could be said to be a summary of the latter. However, in certain issues, it discusses points in detail while in certain cases it lays them out briefly.

Having discussed all these, we suggest that further study on al-Shāfi'ī's other writings should be undertaken in order to establish his views in greater detail. The author suggests *Kitāb Ikhtilāf Mālik wa al-Shāfi'ī* as being a particularly promising field for study.

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## APPENDIX

The Text of *Jimā' al-ʿIlm*

جامع العلم

للإمام أبي  
محمد بن إدريس الشافعي

٢٠٤-١٥٠

لشكركم

٢٩/١/١٩٩١

بجيتي

أحمد محمد شاكر

١٣٠٩

MAKTABAT-UL-HIKMAH

HIKMAH ULLAH BIR N.H.B. SAHIB

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الحمد لله

١٤٢٢/١/١٩

لله الحمد

شكركم

حقوق الطبع محفوظة  
للمكتبة

نَظَرْتُ فِي كُتُبِ خَوْلَا، السَّابِقِ  
الَّذِينَ تَبَعُوا فِي الْعِلْمِ  
فَلَمْ أَرَ أَحَدًا لَيْسَ مِنَ الْمُطَهَّرِينَ  
كَأَنَّ لَيْسَ يَتَّبِعُ شَرَّ الدُّرَرِ.

الحافظ

## مقدمة المؤلف حمزة بن محمد

الحمد لله رب العالمين . وصلى الله على أشرف المرسلين ،  
النبي الكريم ، والسيد الأمين ، خير الخلق أجمعين ، محمد بن عبد الله  
بن عبد المطلب ، وعلى آله الطيبين الطاهرين ، وأصحابه  
مُحابة الدين ، وسلم تسلياً .

وهذا كتابُ (جَماعِ العلمِ) .

دُرّة كريمة من دُرر الشافعي ، وطِرفة من أبداع طِرفة .

حكى فيه مناظراتٍ بينه وبين بعض أهل العلم في عصره ،  
في أصول الاستدلال ، أو إن شئت : في بعض مسائل من  
أصول الفقه ، وأكثر ما يدور الجدل فيه في الاحتجاج بالأخبار ،  
ورجحة الإجماع وحقيقته ، والأمر والنهي ، ونحو ذلك .

الله الشافعي بعد كتاب (الرسالة) . وأحال فيه في بعض  
المواضع عليه <sup>(١)</sup> . ففعل في هذا بعض ما أجعل في (الرسالة) ،  
وأجمل في هذا بعض ما فُعل هناك .

وقد رأيت أن أتمم الشافعي فيما صنع ، فُتبع في التحقيق  
والإحياء هذا بذلك .

(١) انظر ما يأتي في هذا الكتاب (ردم) (١٠٣) .

رسالة في أول المقدمة وأول الكتاب  
بسمين بخط كوفي عن مصنفين  
من أئمة المصنف بدار الكتب المرمية

المصاحف. في الأخذ بالكتاب والسنة، والأخذ بها، وإعراض  
عن التقليد والعصبية المذهبية والآراء. وفي قوة الحجية، والسمو  
إلى أعلى درجات البلاغة والبيان.

وبعد: فإن كتاب (جميع العلم) و (صفة نهي النبي)  
طبعاً في ضمن كتب الشافعي التي جُمعت في الكتاب (الأم)  
بالطبعة الأميرية سنة ١٣٢٦. وهذا في الجزء السابع منه  
(ص ٢٥٠ - ٢٦٧). وقد ذكر المصحح عند أول (جامع العلم)  
أنه انفردت في هذا الموضع نسخة سقيمة جداً، وأنهم لم يعتدوا  
على غيرها بعد البحث والتثبت.

وقد رجعتُ إلى المخطوطة التي وصفت، وهي في دار الكتب  
المصرية برقم (٧٣٢) فقه شافعي، وقابلت الكتاب عليها حرفاً وحرفاً،  
فوجدتُ أنه لم يَلُف في وصفها، بل هي أشد سقمًا مما قيل فيها،  
وإن مصصح (الأم) بذل في تصحيحها جهداً عظيماً مشكوراً.  
أما به الله.

ثم لم آل وسماً في التحري والتوثيق، لتصحيح الكتاب  
وتحقيقه، وضاللتُ مُصحح الطبعة الأولى في كثير من المواضع،  
بما عرفتُ من علم الشافعي، وبما قُهرتُ من طريقته في الإيالة  
عما يريد، وبمقارنته كلامه هنا بكلامه في كتبه الأخرى،

وأخيراً هذا الكتاب كُتِبَ لشافعي. يُسمى (كتاب صفة  
نهي النبي صلى الله عليه وسلم). ثم ظننتُ أنه من شدة كتب  
(جامع العلم)، وأنه الباب الأخير منه. فإنه ذكر في (جامع العلم)  
« بين فرأى الله تعالى » (رقم ٥٥١ - ٥١٧) فكان المقول  
أن تتبع الفرائض المهمات، لمتجاسس والتوافق. وقد صنع مثلاً  
ذلك في كتب (الرسالة)، إذ ذكر الفرائض وحديثها وجعلها  
(ص ١٤٧ - ٣٤٢) ثم ذكر « صفة نهي الله ونهي رسوله »  
(ص ٣٤٣ - ٣٥٧). وقد كتب هذا الكتاب في (الأم)  
عقيب كتاب (جامع العلم).

ولكن الذين ترجموا لشافعي ذكروا في سرد مؤلفاته كتاباً  
باسم (صفة نهي النبي). فيحتمل أن يكون هو هذا الكتاب  
الصغير، ويحتمل أن يكون كتاباً آخر مستقلاً لم يقع إلينا.

وإنَّ ما كن فإن في نشر هذا الكتاب ملحقاً بجميع العلم  
فائدة جليلة النفع، ينبغي الحرص عليها، كما ينبغي الحرص على  
كل حرفٍ من كتب الشافعي. لما في كتبه من علم نقي، ورأي  
صائب، وحكمة بالغة، عن بعدة نقادة، وعقل كامل،  
ومنطق متزن. وليكون ما نلناه على الناس من كتبه، نبراساً  
يُسْتَنَادُ به، ومثالاً يُحْتَذَى: في العلم والدين، وتباع السلف

## بسم الله الرحمن الرحيم

(١١) أخبرنا الربيع بن سليمان، قال أخبرنا محمد بن إدريس الشافعي قال :

١ — لم أسمع أحداً — نسبته للناس أو نسب نفسه إلى علم — يخالفني في أن فرض الله عز وجل اتباع أمير رسول الله صلى الله عليه وسلم ، والسلام إبعثه . بأن الله عز وجل لم يجهل لأحد بعده (٣) إلا اتباعه . وأنه لا يلزم قول بكاء حال إلا بكتاب الله أو سنة رسول صلى الله عليه وسلم . وأن ما سألنا تبع لنا . وأن فرض الله علينا وعلى من بعدنا قولنا ، في قبول الخبر عن رسول الله صلى الله عليه وسلم — واحد . لا يختلف في

(١) الراجح عندي أن الذي يقول أخبرنا الربيع هو أبو الهيثم لأمره الإمام ثقة ، حدث القرقي ، محمد بن يعقوب بن يوسف بن عثمان النيسابوري . وله سنة ٢٤٧ ومات نيسابور سنة ٣٤٦ في شهر ربيع الآخر . وله ترجمة في الأنساب للسماعي ( ورقة ٤٢ ) والباب لابن الأثير ( ١ : ٥٦ ) ومذكر الخلفاء ( ٧٥ — ٧٣ : ٣ ) والفتاوى ( ٢ : ٢٧٣ — ٢٧٤ ) .

(٢) هو الربيع بن سليمان بن عبد الجبار الرازي المؤذن ، صاحب الشافعي وكنيته وزاوية كنية . وله سنة ١٧٤ ومات في يوم الاثنين ٢٠ شوال سنة ٢٧٠ بمصر . وله ترجمة في التهذيب ( ٣ : ٧٤٥ — ٤٦ ) ومذكر الخلفاء ( ٣ : ١٥٥ — ١٤٩ ) وفتاوى ابن السكيت ( ١ : ٢٥٦ — ٢٦٠ ) والفتاوى ( ١ : ١٥٥ ) .

(٣) ط ٥٠٠ بعده ٤ .

خصراً كتاب ( الرسالة ) . وحرصت على الأمانة العلمية ، فأثبت ما في الطبعة الأميرية بالخاصة ، راجعاً إليها بحرف ط حتى يكون التارئ على كينة مما في النسخين ، وليرجع ما شاء منها ، إن بدا له الترجيح .

ولم أسبغ في شرح الكتاب ، كما أسبغت في شرح ( الرسالة ) ، روي للاختصار ، ورغبة في الإكثار من نشر ما أوفق للنشر من حرد الشافعي وآثاره ، رضي الله عنه .

فقال الله المبدئ لنا يومه قبل استحقاقها ، المديها علينا ، مع تقديرنا في الإيمان على ما أوجب به من شكره بها ، الجاعلنا في خير أمة أخرجت للناس : أن يبرزنا فيما في كتابه ، ثم سنة نبه ، وقولاً وعلاً يودي به عتاً حقه ، ويوجب لنا نافعاً مزيدة (١) . وأسأله المدي والساد ، والجمعة والتوفيق .

أبو الأشبال  
أحمد محمد شاكر

عن كوكري القبة عصر الثلاثة ( ٢٩٩ ربيع الأول سنة ١٣٥٩  
٧١ مايو سنة ١٩٤٠ )

(١) القياس من الرسالة ( رقم ٤٧ ) .

## باب

### حكاية قول الصائفة التي ردت الأخبار كلها

قال الشافعي رحمه الله تعالى :

٤ — قال لي قاتان يُنسب إلى العلم بهذاذهب أخيه : أنت عربي ، والقرآن<sup>(١)</sup> تركل بلسان من أنت منه<sup>(٢)</sup> ، وأنت أدري بحفظه ، وفيه لله فرائض أنزها ، لو شكك شاك — قد تلبس عليه القرآن بحرف منها — استبدته ، فإن تلب وإلا قتلته . وقد قال الله عز وجل في القرآن : لم ينزلنا الكتاب<sup>(٣)</sup> سري<sup>(٤)</sup> . فكيف جاز عند نفسك ، أو لأحد في شيء فرض الله<sup>(٥)</sup> — : أن يقول مرة : الفرض فيه عالم ، ومرة : الفرض فيه خاص ، ومرة : الأمر فيسه فرض ، ومرة : الأمر فيه دلالة ، وإن شاء : ذو إباحة ؟

(١) ه القرآن ه بفتح الراء بعدها ألف ه بدون همزة . وكذلك تبتها دائما في كتب الشافعي ، لأنها لفته وقراءته ، إذ قرأ بقرأة ابن كثير ، أحد القراء المعروفين ، وانظر ما كتبناه تليقا على النقرة (هـ) من الرسالة .  
(٢) ط ه من أنت منهم . وما هنا صحيح ه يجوز إعادة التسمية على الموصول باعتبار لفظه .  
(٣) سورة النحل آية ٨٩ ط ه فرضه الله ه .

أن النضر والواجب فيمن الخير عن رسول الله صلى الله عليه وسلم :  
لأفرقة . مدصفت قوفا . إن شاء الله تعالى .

٢ — قال محمد بن إدريس<sup>(١)</sup> : ثم تفرق أهل الكلام في

تثبت الخبر عن رسول الله صلى الله عليه وسلم تفرقا مبنيا ،  
فتفرق<sup>(٢)</sup> غيرهم من نسبته العامة إلى الله فيه تفرقا . أما بعضهم  
فقد أكثر من التسليم<sup>(٣)</sup> ، والتخفيف من النظر ، والفتنة ،  
والاستعجال بالرياسة .

٣ — وسأتمثل لك من قول كافر فرقة عربيا مثالا يذك  
على ما وراءه ، إن شاء الله تعالى .

(١) ط ه وقال الشافعي رحمه الله تعالى ه .  
(٢) ط ه وتفرق ه .  
(٣) الشافعي ياتي التفرقة ، وينتهي عنه أهل العلم ، وينتد عن بطله ويدع صائفة والاستدلال . ولذلك يقول تلميذه الزبي في أول محضره في الفتنة ( حاشي الأم ١ : ٢ ) : ه اختصرت هذا الكتاب من علم محمد بن إدريس الشافعي رحمه الله ، ومن معي قوله ، لأزيد به على من أراد . مع إعلانية أنه عن تلميذه وتقليد غيره ه . ويقول الشافعي في كتاب الرسالة ( رفق ١٣٦ : ١ ) : ه والتقليد أقل من أقل منهم ه ، والله يعزينا وهو ه .

٧ — قال : قلت : إنما أعطي من وجه الإحاطة<sup>(١)</sup> ، أو من وجه<sup>(٢)</sup> الخبر الصادق ، وجه القياس . وأسبابها عندنا مختلفة ، وإن أعطينا بها كلها في بعضها أثبت من بعضي .

٨ — قال : ومثل ماذا ؟

٩ — قلت : إعطائي من الرجل بأقاربه ، وبالبيته ، وإياه المين وحلف صاحبه . والإقرار أقوى من البيته ، والبيته أقوى من إياه المين وبين صاحبه . ونحن وإن أعطينا بها عطاء واحداً فأسبابها مختلفة<sup>(٣)</sup> .

١٠ — قال : وإذا قُمت على أن تتبصلاً أخبارهم ، وفيهم ما ذكرت من أمركم بقول أخبارهم ، وما حجبتكم<sup>(٤)</sup> فيه على من ردها ؟

١١ — فقال : لا أقبل<sup>(٥)</sup> شيئاً إذا كان يمكن فيه الرفع . ولا أقبل إلا ما أشهد به على الله ، كما أشهد بكتابه ،

(١) يريد بالأحاطة العظم واليقين . وسأني تفسيرها في الكتاب ، في القصة ( رقم ١٦٩ ) . (٢) ط ه ومن جهة . (٣) النظر القصة ( رقم ١٨٢١ ) من الرسالة . (٤) الذي : فما حجبتكم . أتى بالواو في موضع الفاء . كعادته في العتق في استعمال الحروف ، ورواية بعضها مكان بعض . (٥) هذا بقية كعدم المناظر للشافعي ، معروفة على ما بيانه ، وفي ط وقال ولا أقبل .

٥ — وأكثرت<sup>(١)</sup> ما فوّقت بينه من هذا عندك حديث ترويه عن رجل عن آخر عن آخر ، أو حديثان أو ثلاثة ، حتى تبلغ به رسول الله صلى الله عليه وسلم . وقد وجدناك ومن ذهب مذهبك لا يُبررون أحداً لقيتموه وقدّمتموه في الصدق والحفظ ، ولا أحداً لقيت من لقيتم — : من أن يملأ<sup>(٢)</sup> ويسى ويخطى في حديثه . بل وجدناكم تقولون لغير واحد منهم : أخطأ فلان في حديث كذا ، وفلان في حديث كذا . ووجدناكم تقولون ، لو قال رجل لحديث أخطأتم به وحركتم من علي الخاصة : لم يملأ هذا رسول الله صلى الله عليه وسلم ، إنما أخطأتم أو من حديثكم ، وكذبتم أو من حديثكم — : لم تستقيموا ، ولم تتريدوا . على أن تدولوا له : بئس ما قلت .

٦ — أفيجوز أن يفرق بين شيء من أحكام القرآن ، وظاهرة واحد عند من سمعه — : بخبر من هو كما وصفتم فيه ؟ وتقيمون أخبارهم مقام كتاب الله ، وإلكم<sup>(٣)</sup> تعلمون بها وتسمعون بها ؟

(١) ط وكثرت وهو خطأ . (٢) وخطط ه باب ه فرت . (٣) ط وائتم . وما هنا أقوى وأبلغ .



[illegible]

١٦ -- قُلْتُ: إِنَّ سَلَكَ سَبِيلَ النَّعِيَّةِ. كَرَفَ بِعِشْرٍ  
مَا قُلْتُ دِيَارًا عَلَى أَنَّكَ مَتَيْ مِنْ قَوْلِكَ أَعْلَى مَا يَجِبُ عَلَيْكَ  
الِانْتِفَاعُ عَنْهُ. وَأَنْتَ تَدْعِي أَنْ قَدْ حُصِرْتَ خِزْلَتُكَ فِيهِ عَمَّا لَا يَنْبَغِي  
أَنْ تَقْفَرَ مِنْ أَمْرِ دِينِكَ.

۱۷ — قال : فذكر

١٨ — قُلْتُ: قَالَ اللَّهُ عَزَّ وَجَلَّ: ﴿وَلَا تَقْرَأُ الْكِتَابَ وَالْحِكْمَةَ﴾

١٩ — قال : فقد علمنا أن الكتاب كتاب الله : فما الكتاب ؟

٢٠ — قال: : سئلت

۲۱ — و :  $\frac{1}{2} \frac{1}{\sqrt{1-x^2}}$   $\frac{1}{2} \frac{1}{\sqrt{1-x^2}}$   $\frac{1}{2} \frac{1}{\sqrt{1-x^2}}$   $\frac{1}{2} \frac{1}{\sqrt{1-x^2}}$

(١) ط (رجع عن قوله وما أتينا بهذا مصدقاً

(٣) انظر أيضاً كلام الشافعي في تفسير والحكمة، بابها السنة، في الرسالة في المقترحات (٩٦، ٢٤٤، ٢٥٧، ٣٠٥، ٣٠٧).

[illegible]

١٢ — فتأملت له : من علم الله وأحكامه ، والله عليه وسلم على قول أخبار الصادقين عن رسول الله صلى الله عليه وسلم ، والغفر<sup>(١)</sup> ين ما دلت رسول الله صلى الله عليه وسلم على الغفر بينه من أحكام الله . وعلم بذلك مكان رسول الله صلى الله عليه وسلم . إذ كنت لم تشاهد .

(١) الغفر : جبر

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١٤ — قَالَتْ فَقَدْ رَكِدَ بِنَا (٣) تَدِينُ بِنَا تَقُولُ !  
١٥ — قَالَ : أَفْتَعْرِضْنِي مِثْلَ هَذَا ، مِمَّا تَقْرَأُ بِذَلِكَ الْحِجَةِ (٤)

(١) «والتفرق» عصف على «قبول» . يعني : دله على قبول الروايات المصدقة . وفي «تفرق بين ما دلت الأدب على الفرق بينه من أحكام الفرائد» . راجع الرسالة في التفردات (٥٣ — ٢٦٩ ، ٥٩ — ٣١١) وفي مواضع أخر تعرف من التفرس الملهي هناك . وقد ظن مصحح ط أن في الكلام هنا سقطاً وخبرياً . يند فيه ، وأسكتك ثم مصحح .

(٢) خبر الإمام باقر عليه السلام من قوله «أخبار الصادقين» واما بالرفع خبر شيخنا محمدي عليه السلام : «كل من فتن» وهي خبر الخاصة وخبر العامة.

(۳) ط دهان گشت و روا : منّا أصبح وأجود .

(二)

٢٩ — قال : وأين هي <sup>(١)</sup> ؟

٣٠ — قلت : قول الله عز وجل : ﴿ وَادْكُرُوا مَا بَيْنَ يَدَيْكُمْ مِنْ آيَاتِ اللَّهِ وَالْحِكْمَةِ ، إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ﴾ <sup>(٢)</sup> . فأخبر أنه يُبلى في بيوتهم شيئا .

٣١ — قال : فهذا القرآن يُبلى ، فكيف تُبلى الحكمه ؟

٣٢ — قلت : إنما معنى التلاوة أن يُنطق بالقرآن والسنة ، كما يُنطق بها .

٣٣ — قال : فإذهم أتبعين في أن الحكمه غير القرآن من الأولى .

✱ ✱

٣٤ — وقلت : افترض الله علينا اتباع نبيه ، صلى الله

عليه وسلم .

٣٥ — قل : وأين ؟

٣٦ — قلت : قال الله عز وجل : ﴿ فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُخَرِّجُواكَ فِي سَبْعِ شَجَرٍ مِنْهُمْ . ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرْجًا مِمَّا قَتَلْتُمْ وَلَمْ تُمْلِكُوا سَبْعًا ﴾ <sup>(٣)</sup> .

(١) كلمة دعي ، سقطت من . ط

(٢) سورة الأعراف آية ٣٤ (٣) سورة النساء آية ٥٥

٢٢ — قلت : تعني بأن يبين لهم عن الله عز وجل <sup>(١)</sup> وعلا

مثل ما بين لهم في جملة الفرائض ، من الصلاة والزكاة والحج وغيرها ، فيكون الله قد أحكم فرائض من فرائضه بكتابه ، وبين كيف هي على لسان نبيه ، صلى الله عليه وسلم ؟

٢٣ — قال : إنه ليحتمل ذلك .

٢٤ — قلت : فإن ذهبت هذا المذهب فهي <sup>(٢)</sup> في معنى الأول قبله ، الذي لا تصل إليه إلا بخبر عن رسول الله صلى الله عليه وسلم .

٢٥ — قال : فإن ذهبت مذهب تكرير الكلام ؟

٢٦ — قلت : وأيهم أولى به إذا ذكر الكتاب والحكمة :

أن يكونا شيئين أو شيئا واحدا ؟

٢٧ — قال : يحتمل أن يكونا كما وصفت ، كتابا وشيئا ، فيكونا شيئين . ويحتمل أن يكونا شيئا واحدا .

٢٨ — قلت : فأظهرهما أو لاها . في القرآن <sup>(٣)</sup> دلالة على

ما قلنا ، وخلاف ما ذهبت إليه .

(١) ط د عز وجل . (٢) د تعني بهي الحكمة . وفي ط د فهو .

(٣) ط د وفي القرآن . وما هما الجود ، لأن الكلام استئناف في معنى التعليل .

٤٠ — قلت : لقد فرض الله عزَّ وجلَّ علينا اتباع أمره فقل :

﴿ ما آتاكم <sup>(١)</sup> الرسول فخذوه ، وما نهاكم عنه فانتهوا <sup>(٢)</sup> 》

٤١ — قل : إنه يبين في التنزيل أن علينا فرضاً أن نأخذ

الذي أمرنا به ، وننتهي عما نهانا رسول الله صلى الله عليه وسلم .

٤٢ — قال : قلت : والفرض علينا وعلى من هو من

قبلنا <sup>(٣)</sup> ومن بعدنا واحداً ؟

٤٣ — قال : نعم .

٤٤ — قلت <sup>(٤)</sup> : فإن كان ذلك علينا فرضاً في اتباع أمر

رسول الله صلى الله عليه وسلم : الحديث أنه إذا فرض علينا

شيئاً فقد كَلَّمنا على الأمر الذي يُؤخذ به فَرَضُهُ ؟

٤٥ — قال : نعم .

٤٦ — قلت : فهل نجد السبيل إلى تادية فرض الله عزَّ وجلَّ

في اتباع أوامر رسول الله صلى الله عليه وسلم ، أو أخذ قَبَائِك

(١) التلاوة ، وما آتاكم ، ولكن الشافعي كبر ما يحذف حرف المفعول

ويأتي بموضع الاستدلال فقط . انظر الرسالة في الفقرات (١٤٣ ، ١٤٤ ، ١٤٥ ، ١٤٦)

وفد كتبت الواو في ط . (٢) سورة الجدر آية ٧

(٣) ط ه وعلى من هو قبلنا ه . (٤) ه قلت ه .

٣٧ — وفي <sup>(١)</sup> عزَّ وجلَّ : ﴿ من طبع الرَسُول فقد

طبع الله <sup>(٢)</sup> 》

٣٨ — وفي : ﴿ فيحذر الذين يخشون عن أمره أن

يُعصيه فتنة أو يُعصيه عذاب آية <sup>(٣)</sup> 》

٣٩ — قال : ما من شيء أولى بنا أن نقوله في الحكمة :

من أنها سنة رسول الله صلى الله عليه وسلم . ولو كان بعض

ما قل أعجبنا <sup>(٤)</sup> : أن الله أمر بالتسليم لخصم رسول الله

صلى الله عليه وسلم ، ولحكمته <sup>(٥)</sup> إنما هو ما <sup>(٦)</sup> أنزله - :

لكن من لم يسأله ، لم أن يُنسب إلى التسليم لخصم رسول الله

صلى الله عليه وسلم <sup>(٧)</sup> .

(١) ط ه وقال الله ه . (٢) سورة النساء آية ٨٠

(٣) سورة النور آية ٦٣

(٤) يعني : لم يصح بعض ما قاله أصحابه في ذلك ، وهو : أن الله الخ . وفي

ط ه ولو كان قال بعض أصحابنا . والذي أنبتنا عن الخطوط هو المصواب .

(٥) ووجهه ، منسوب عفاً على اسم ه أن ه . يعني : وأن حكمته مما أنزل .

(٦) ط ه بيت ه وما ، وهو خطأ .

(٧) يعني : لسكان من لم يبلغ للمدينة لم يأخذ به يجوز أن يطلق عليه أنه سلم

محكم رسول الله ، لأنه تبع القرآن واتباع الحكمه ، وهي بعض ما نزل في القرآن

في فهم هذا القائل . أما عى معنى أن الحكمه هي السنة فانه لا يجوز أن ينسب إلى

أَبْرَاهِيمَ فَلَوْلَهُ، فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلَوْلَهُ السَّادِسُ (١) .

٥٢ — فَرَعْنَا بِالْخَبَرِ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ

آيَةُ الْفِرَافِصِ نَسَخَتْ الْوَصِيَّةَ لِلَّهِ الدِّينِ وَالْأَوْرَاقِينَ. فَلَوْ كُنَّا نَحْنُ  
لَا يَقْبَلُ الْخَبَرَ فَقَالَ قَائِلٌ: الْوَصِيَّةُ نَسَخَتْ الْفِرَافِصَ، هَلْ  
يَجُودُ الْمَجْمَعَةُ عَلَيْهِ إِلَّا بِخَبَرِ<sup>(٣)</sup> عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ  
وَسَلَّمَ<sup>(٣)</sup> ١٩

٢٣٠ — قال : هذا شبيهه بالكتاب والحكمة . والمجته اليك

بابنا عليا قبل ان يخرج عن رسول الله صلى الله عليه وسلم.

وقد صرْتُ إلى : قبول الخبر لازم للمسلمين <sup>(١)</sup> ، كما ذكرت  
وما في مثل معانيه من كتاب الله . وليست تدخلني أنفَه من  
إظهار الانتقال عما كنت أرى إلى غيره ، إذا بأت الحجة فيه ،  
بل أتدين بأن علي الرجوع عما كنت أرى إلى ما رأيت <sup>(٢)</sup> الحق .

(١) سورة النساء آية ١١

(٣) انظر الرسالة في المقرات (٣٩٣ - ٤١٥، ٤١٤ - ٢١٩)

(٤) « يقول الجبر » الشيخ جولة محكية ، يعني أنه أخذ بهذه القاعدة . وفي ط  
« إلى أن يقول الجبر » وزيادة « أن » لا ضرورة لها ، على ما فسرتها . لأن  
التألفي صنيح في الرسالة نحو ما صنيح ههنا ، فقال في المقررة ( ١٥٤٣ ) :  
« لأن الأصل : الجاني أولى أن يترجم جانيته من غيره » .

(٥) ط و رأية :

October 21<sup>st</sup> 1899

أَوْ بَعْدَكَ ، مَنْ لَمْ يَشْهَدْ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ :-

إلا باخبر عن رسول الله صلى الله عليه وسلم ؟

٤٧ — وَإِنَّ فِي أَنْ لَا آخِذَ ذَلِكَ إِلَّا بِالْخَبَرِ لَمَّا دَلَّنِي (١)

عَلَيْهِ وَسَلَّمَ .

Neilsen

✱ ✱

٤٨ — قال : وَقُلْتُ لَهُ : كَيْزُؤْمُكُ <sup>(٣)</sup> فِي نَاسِخِ الْقُرْآنِ

- die Qualität,

۴۹ — قال : فازكر منه شيئاً ؟

• — فقلت: قال تعالى: ﴿فَلْيَسِّرْ لَهُ سُبُلَ الْبَيْتِ﴾

أَحَدُكُمْ أَلَمْ يَكُنْ أَوْفَىٰ بِمَا خَذَلُوا الْأَوَّلِينَ (٢٢)

١٥ — وقيل  
١٦ — قال  
١٧ — قال  
١٨ — قال  
١٩ — قال  
٢٠ — قال  
٢١ — قال  
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١٠٠ — قال

السُّلَاسُ عَمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ

(١) وما هـ في قوله . ولما داني هـ موصولة هـ أي : الذي داني . وبصح أن تكعن

(۲) ائی : یلزمک هذا . وقد زیدت کلمه و هذا ، فی ط . وحذفها علی

(۳) ط و دل الله تعالى .

- ٦٠ — **وقل** : يا أيها الذين آمنوا صبروا على ما آتاكم الله . إن الذين آمنوا من دون الله لا يملكون دابة واحدة . (١)
- وقد حُذِرَ من أن كثر التمسُّق في زمن رسول الله صلى الله عليه وسلم لا يكونوا يدفعون من دونه شيئاً . لأن فيهم المؤمنين . ومخرج الكلام عنه (٢) فهذا يريد من كن هكذا (٣)
- ٦١ — **وقل** : لا تأمروا قوم الذين آمنوا أن ينكحوا الذين آمنوا . فإنهم آمنوا قبلكم . (٤) **وقل** : لا تأمروا قوم الذين آمنوا أن ينكحوا الذين آمنوا . فإنهم آمنوا قبلكم . (٥) **وقل** : لا تأمروا قوم الذين آمنوا أن ينكحوا الذين آمنوا . فإنهم آمنوا قبلكم . (٦)
- ٦٢ — **وذكرت له أشياء من كتب في (كتابي) (٧)**

- (١) سورة الحج آية ٧٣
- (٢) عاماً وحالاً ، وخبر المبدأ جهة بعده مصدره بالفاء ، كما في الكلام من الدعوم الشيء للشرط .
- (٣) ط د وإنما ه . (٤) ط الرسالة (رقم ٢٠٢ — ٢٠٣) .
- (٥) سورة الأعراف آية ١٦٣
- (٦) انظر الرسالة (رقم ٢٠٨ — ٢٠٩) .
- (٧) يريد بكتابه (كتاب الرسالة) الذي شرحه وحققه . والثاني إنما يسميه (الكتاب) . وأما لفظة (الرسالة) فإنه اسم أطلق عليه في عصره وبعد عصره ، حتى اشتهر به وصار كنعيم له ، لأنه أرسله حيث أنه أولاً إلى عبد الرحمن بن مربي . وسد في إشارة أخرى له في الفقرة (رقم ١٠٣) . وانظر مقدمة لكتاب الرسالة (ص ١٠ — ١٢) . وهو يشير بهذا إلى ما قبل في الرسالة في الفقرات (١٧٢ — ٢١٣) وبال موضوع آخر تدخل في هذه الماني .

## العام

٥٥ — **ولكن زينت الهدى في القرآن** ، كيف جعله الله

مودة ، وخبر آخر

٥٥ — **قلت له** : أنت من العرب ورابع . وقد تحقق شيء

عند تريد به الشخص ، فيمين في نصي (١) . وست خير في

ذلك بخير لا بخير لازم . وكذلك أشرت في القرآن . فبين

في القرآن مرة ، وفي السنة أخرى .

٥٦ — **قل** : وذكر منها شيئاً

٥٧ — **قلت** : قل الله عز وجل : لا الله خفيص

شيء (٢) . فكان مخرج بالتقول عاماً يراد به العام

٥٨ — **وقل** : لا تأمروا قوم الذين آمنوا أن ينكحوا الذين آمنوا . فإنهم آمنوا قبلكم . (٣)

وفيما لا يتعرفها ، بأن أكرمكم عند الله أتقاكم (٤)

فكان نفس محققة من ذكر وأنتي . فهذا علة يراد به العام .

٥٩ — وفيه الخصوص : **وقل** : لا تأمروا قوم الذين آمنوا أن ينكحوا الذين آمنوا . فإنهم آمنوا قبلكم . (٥)

انها ك . فتتقوى وخلافها لا تكون إلا للبايعين غير ممنوعين

على عقولهم (٥)

- (١) انظر الرسالة في الفقرات (١٧٢ — ١٧٨) .
- (٢) سورة الزمر آية ٦٢ انظر الرسالة (رقم ١٧٩ — ١٨٠) .
- (٣) سورة ممتحنة آية ١٣ (٥) انظر الرسالة (رقم ١٨٨ — ١٩٦) .

عالمًا ، ولم يُورث المسلمون كافرًا من مسلمٍ ، ولا عبدًا من حرٍّ ، ولا قاتلًا ممن قَتَلَ - : بالسَّنة ؟

٧٣ — قال : نعم . ونحن نقولُ ببعض هذا .

٧٤ — قلتُ<sup>(١)</sup> : فما ذلك على هذا ؟

٧٥ — قال : السنة . لأنه ليس فيه نصٌّ قرآنٍ .

٧٦ — قلتُ : فقد بَانَ لك في أحكام الله تعالى في كتابه فَرَضَ اللهُ<sup>(٢)</sup> طاعةَ رسوله ، والموضع الذي رَضَمَهُ اللهُ عزَّ وجلَّ به ، من الإِبَاقَةِ عنه : ما أنزَلَ<sup>(٣)</sup> خاصًّا وعامًّا وناسخًا ومنسوخًا ؟

٧٧ — قال : نعم . وما زلتُ أقولُ بخلافِ هذا ، حتى بَانَ لي خطأ من ذهبَ هذا المذهب . ولقد ذهبَ فيه أناسٌ مذهبيُّن : أحدُ الفريقين [لا يتقبلُ خبرًا] ، وفي كتاب الله البيان<sup>(٤)</sup> .

٧٨ — قلتُ : فما أثرُك ؟

- 
- (١) ط و نقلت . . . (٢) لفظُ الإِبَاقَةِ لم يذكُر في ط .  
 (٣) وما موصولة ، مقول للمصدر ، وهو : الإِبَاقَةُ .  
 (٤) يريد : ويقول في كتاب الله البيان . يعني أن كتاب الله فيه البيان للكتابي فلا يحتاج معه إل شيء من السنة أصلاً !

٦٣ — فقال : هو كما قلتُ كلُّهُ . ولكن يَبَيِّنُ لي العامُّ الذي لا يوجدُ في كتاب الله أنه أُريدَ به خاصٌّ ؟

٦٤ — قلتُ : فَرَضَ اللهُ الصَّلَاةَ . أَلَسْتَ تجدُها على

الناسِ عامًّا<sup>(١)</sup> ؟

٦٥ — قال : بَلَى .

٦٦ — قلتُ : وَجَدَ الْعُمَمُ مَخْرَجَاتٍ مِنْهُ ؟

٦٧ — قال : نعم .

٦٨ — وقلتُ : وَجَدَ الزَّكَاةَ عَلَى الْأَمْوَالِ عَامَّةً ، وَجَدَ بَعْضُ الْأَمْوَالِ مَخْرَجًا مِنْهَا ؟

٦٩ — قال : بَلَى .

٧٠ — قلتُ : وَجَدَ الْوَصِيَّةَ لِلرَّالِّدِينَ مَنْسُوخَةً بِالْفَرَائِضِ ؟

٧١ — قال : نعم .

٧٢ — قلتُ<sup>(٢)</sup> : وَفَرَضَ الْمَوَارِثَ<sup>(٣)</sup> لِلْأَبَاءِ وَالْأُمَّهَاتِ

- 
- (١) أي فرضًا عامًا ، وفي ط و عامة .  
 (٢) كلمة و قلت و سقطت من ط .  
 (٣) كلمة و فرض و تعرأ فلا مانعًا ، و الموارث و مقولا . وتقرأ أيضًا و فرض و مصدرًا ، و الموارث و معطاف إليه . أي : وَجَدَ فَرَضَ الْمَوَارِثِ . ويجوز رفع المصدر على استئناف الكلام .



٨١ — وأخفا ومذهب الخلال<sup>(١)</sup> في هذين المذهبين واضح<sup>(٢)</sup> .

لست أقول بواحد منهما .

٨٢ — ولكن هل من حجة في أن تبين الخوة إباحة؟  
بغير إباحة؟

٨٣ — قلت: نعم .

٨٤ — قال: ما هو؟

٨٥ — قلت: ما تقول في هذا، أرجو إلى جنبي، أبحرتم<sup>١</sup> الدم والمال؟

٨٦ — قال: نعم .

٨٧ — قلت: فإن شهد عليه (شاهدان) بأنه قتل رجلاً وأخذ ماله، فهو هذا الذي في يديه؟

٨٨ — قال: أقتله قَوْراً، وأدفع ماله الذي في يديه إلى ورثة المشهور له .

(١) ط « وأخطأ قال ومذهب الخلال » الخ . فجعل فيها كلمة « وأخطأ » من تمام الفقرة السابقة، فزبدت كلمة « قال » . وكل هذا خلاف للمخطوط .

(٢) لأنه ينبغي نقلاهما إلى الخروج من الإسلام، إذ ينكر المعلوم من الدين بالضرورة . وهذا واضح بديهي .

٧٩ — قال: أفنسى به عظيم إلى عظيم من الأمر<sup>(١)</sup> ،

فتقول: من جاء بما يقع عليه اسم « صاوة » وأق ما يقع

عليه اسم « زكاة » فقد أدى ما عليه، لا وقت في ذلك،

وإذا صلى ركعتين في كل يوم، أو قال<sup>(٢)</sup>: في كل أيام!

وقال: ما لم يكن فيه كتاب الله فليس على أحد فيه

فرض!

٨٠ — وقال غيره: [ما كان فيه قرآن يُقبل فيه الخبر]

فتقال بقرين من قوله فيما ليس فيه قرآن . فدخل عليه

ما دخل على [الأول]<sup>(٣)</sup> أو قريب منه . ودخل عليه أن

صار إلى قبول الخبر بعد رده . وصار إلى أن لا يعرف

ناسخاً ولا منسوخاً، ولا خاصاً ولا عاماً .

(١) يعني: أفنسى به قول عظيم إلى أمر عظيم . ينكر . يقال: استغفمت الأمر

إذا أسكرته . وفي ط « أفنسى به ذلك إلى عظيم من الأمر » .

(٢) كلمة « قال » ليست في ط .

(٣) كلمة « الأول » ليست في النسخ، وزدنا ما لوجب ذكرها في الكلام .

لأن حديثها يجعل الكلام قد دخل عليه ما دخل على « فيكون المناظر الثاني من

مذهب إلى أن لا يقبل خبراً . وهو قد استنكر هذا الرأي في الفقرة السابقة بقوله:

« أفنسى به عظيم إلى عظيم من الأمر » . وسنبرأ من الغوين مما في قوله بعد

« لست أقول بواحد منهما » .

٩٧ — قُلْتُ لَهُ : أَرَأَيْكَ قَدْ رَجَعْتَ إِلَى قَبُولِ الْخَيْرِ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ، وَالْإِجْمَاعِ دُونَهُ ؟ !

٩٨ — قَالَ : ذَلِكَ الْوَاجِبُ عَلَيَّ .

٩٩ — وَقُلْتُ لَهُ : أَتَجِدُكَ (١) إِذَا أُبْحِتَ الدَّمُ وَالْمَالُ الْحَرَمَيْنِ بِإِحَاطَةٍ — : بِشَهَادَةٍ ، وَهِيَ غَيْرُ إِحَاطَةٍ ؟

١٠٠ — قَالَ : كَذَلِكَ أُمِرْتُ .

١٠١ — قُلْتُ : فَإِنْ كُنْتَ أُمِرْتَ بِذَلِكَ عَلَى صَدَقِ الشَّاهِدَيْنِ

فِي الظَّاهِرِ ، فَقَبْلَتِيهَا عَلَى الظَّاهِرِ ، وَلَا يَعْلَمُ الْغَيْبَ إِلَّا اللَّهُ ، وَأَنَا لِنَطْلُبُ فِي الْحَدَّثِ أَكْثَرَ مِمَّا نَطْلُبُ فِي الشَّاهِدِ ، فَتَجِيزُ شَهَادَةَ بَيْتِ (٢) لَا تَقْبَلُ حَدِيثَ وَاحِدٍ مِنْهُمْ . وَتَجِدُ الدَّلَالَاتِ

عَلَى صَدَقِ الْحَدَّثِ وَغَاطِيهِ مِنْ شُرَكَائِهِ (٣) مِنَ الْخَطَاطِ ، وَالْكَتَابِ وَالسَّنَةِ . فِي هَذَا دِلَالَةٌ . وَلَا يَكُنْ هَذَا فِي

الشَّهَادَاتِ (٤)

(١) ط د تجدك ، بدون المنزلة .

(٢) ط د التبر .

(٣) د شريك ، من باب « فريح » أي صار شريكاً .

(٤) انظر رسالة (رقم ١٠٠١ — ١٠٠٢ ، ١٠١٢ — ١٠١٣)

٨٩ — قَالَ : قُلْتُ : أَوْ يُعْيَكُنُ فِي الشَّاهِدَيْنِ أَنْ يَشْهَدَا

بِالْكَذِبِ وَالنَّاطِلِ ؟

٩٠ — قَالَ : نَعَمْ .

٩١ — قُلْتُ : فَكَيْفَ أُبْحِتُ الدَّمُ وَالْمَالُ ، الْحَرَمَيْنِ بِإِحَاطَةٍ — :

بِشَاهِدَيْنِ ، وَلَيْسَا بِإِحَاطَةٍ ؟

٩٢ — قَالَ : أُمِرْتُ بِقَبُولِ الشَّهَادَةِ .

٩٣ — قُلْتُ : أَتَجِدُ فِي كِتَابِ اللَّهِ تَعَالَى نَصًّا أَنْ تَقْبَلَ

الشَّهَادَةَ عَلَى الْقَتْلِ ؟

٩٤ — قَالَ : لَا . وَلَكِنْ اسْتَدْلَالًا أَنِّي لَا أُوْمَرُ بِهَا (١)

إِلَّا بِمَعْنَى .

٩٥ — قُلْتُ : أَفَيَحْتَمِلُ ذَلِكَ الْمَعْنَى أَنْ يَكُونَ الْيُحْكَمُ (٢)

غَيْرِ الْقَتْلِ ، مَا كَانَ الْقَتْلُ يَحْتَمِلُ الْقَوَّةَ وَالذِّمَّةَ ؟

٩٦ — قَالَ : فَإِنَّ الْجَبَّةَ فِي هَذَا : أَنَّ السَّلَمِينَ إِذَا (٣) اجْتَمَعُوا

أَنَّ الْقَتْلَ بِشَاهِدَيْنِ قَتَلْنَا (٤) : الْكَتَابُ يَحْتَمِلُ لِمَنْ مَا أَجْمَعُوا عَلَيْهِ ، وَأَنْ لَا تُخْطِئَ عَائِقَتُهُمْ مَعْنَى كِتَابِ اللَّهِ ، وَإِنْ أَخْطَأَ بَعْضُهُمْ .

(١) ط د أنه لا بأس بها . (٢) ط د أن يكون الحكم ، وهو خطأ .

(٣) ط د قتلنا . (٤) ط د قتلنا .



١٠٥ — نَزَّيْتُ مَا لَمْ يَجِدْهُ (١) نَعَا فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ ،

وَلَا خَيْرًا عَنِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ، مِمَّا أَسْمَعُكَ

تَسْمَعُ عَنْهُ فَتَحِبُّ بِإِجَابِ شَيْءٍ وَإِبْطَالِهِ — : مِنْ أَيْنَ وَسِمَاكَ

التَّوَلَّى بِنَاقَتٍ مِنْهُ (٢) ؟ وَأَتَى لَكَ بِمَعْرِفَةِ الصَّوَابِ وَالْخَطَا فِيهِ ؟

وَهَلْ تَقُولُ فِيهِ اجْتِهَادًا عَلَى عَيْنٍ مَطْلُوبَةٍ غَائِبَةٍ عَنْكَ ، أَوْ

تَقُولُ فِيهِ (تَعَمُّدًا) ؟ فَمِنْ أَيْمَانِكَ أَنْ تُحْلِلَ وَتُحَرِّمَ وَتُفَرِّقَ بِلَا

مِثَالٍ مُوجِبٍ تَحْتَضِي عَلَيْهِ ١٠٩ فَإِنْ أُبْجِزْتَ ذَلِكَ لِنَفْسِكَ جَازَ

لِنَفْسِكَ أَنْ يَقُولَ بِمَا خَطَرَ عَلَى قَلْبِهِ ، بِلَا مِثَالٍ يَصِيرُ إِلَيْهِ ،

وَلَا عِزَّةَ (٣) تُوجَدُ عَلَيْهِ ، يُعْرِفُ بِهَا خَطْوَتهُ مِنْ صَوَابِهِ !

١٠٦ — فَأَيْنَ مِنْ هَذَا — إِنْ قَدَّرْتَ — مَا تَقْرَأُ لَكَ بِهِ

الْحَقِيقَةَ ، وَإِلَّا كُنْ قَوْلُكَ بِنَا لَا حُجَّةَ لَكَ (٤) مُرَوِّدًا عَلَيْكَ ؟

١٠٧ — قُلْتُ لَهُ : لَيْسَ لِي وَلَا لِعَالَمٍ أَنْ يَقُولَ فِي إِبَاحِهِ

شَيْءٍ وَلَا حَظْرِهِ ، وَلَا أَخْذِ شَيْءٍ مِنْ أَحَدٍ وَلَا إِعْطَالِهِ — :

(١) ط و تحيده . (٢) ط و نجا قلت فيه .

(٣) ط و المعيرة : العلامة التي يتوصل بها من معرفة المتعاقد إلى ما ليس بتعاقد .

كما في معرقات الرغب . وفي اللسان : المتعبد بالشئ على الشئ .

(٤) ط و لك فيه وكذا وفيه ليست في الخطوط .

(٣) (٣)

١٠٢ — قُلْ : فَقَامَ عَلَى مَا وَصَفْتُ مِنَ التَّفْرِيقِ فِي رَدِّ

الْخَيْرِ ، وَقِيلَ بِهِ مَرَّةً وَرَدَّ مُشَابِهَ الْآخَرِ ، مَعَ مَا وَصَفْتُ

فِي (١) بَيَانِ الْخَطَا فِيهِ ، وَمَا يُلْزِمُهُ اخْتِلَافُ أَقْوَالِهِمْ (٢)

١٠٣ — وَفِي وَصْفِنَا هُنَا ، وَفِي (الْكِتَابِ) (٣) قَبْلَ هَذَا — :

دَلِيلًا عَلَى اخْتِلَافِ عَلَيْهِمْ وَعَلَى غَيْرِهِمْ (٤)

\* \*

١٠٤ — قِيلَ لِي : قَدْ قَبِلْتُ مِنْكَ أَنْ أَقْبَلَ الْخَيْرَ عَنْ

رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ، وَعَلِمْتُ أَنَّ الدَّلَالَهَ عَلَى مَعْنَى

مَا أَرَادَ بِمَا وَصَفْتَ مِنْ فَرْضِ اللَّهِ طَاعَتَهُ ، فَأَنَا إِذَا قَبِلْتُ خَيْرَهُ

فَعَنِ اللَّهِ قَبِلْتُ مَا أَجْمَعَ عَلَيْهِ الْمُسْلِمُونَ فَلَمْ يَخْتَلَفُوا فِيهِ ، وَعَلِمْتُ

مَا ذَكَرْتَ مِنْ أَنَّهُمْ لَا يَجْتَمِعُونَ وَلَا يَخْتَلَفُونَ إِلَّا عَلَى حَقٍّ ،

إِنْ شَاءَ اللَّهُ تَعَالَى .

(١) ط و من و بدل و في .

(٢) ط و وما يلزمهم من الاختلاف أقوالهم .

(٣) يعني (كتب الرسالة) وانظر ما مضى في القمرة (رقم ٦٢) .

(٤) انظر الرسالة في خبر الواحد والمجبة في إنباه (ص ٣٦٩ — ٤٧١) .

وموضح آخر تعرف من التفرس العلمي في مادة و المديت . وانظر أيضا كتاب

اختلاف الحديث للشافعي ، المطبوع بهامش الجزء السابع من (الأمم) (ص ٥٨ — ٥٩) .

(٣) (٣)

١١٢ — قلت : إن الله أنزل الكتاب نبيًا لك شيء .

والنبيين من وجوه : منها ما بين فرضه فيه ، ومنها ما أنزله جملة وأمر بالاجتهاد في طلبه ، وذلك على ما يطلب به بعلامات خلقها في عباده ، دهم بها على وجه طلب ما افترض عليهم .

١١٣ — فإذا أمرتهم بطلب ما افترض ذلك ذلك — والله أعلم —

إلا اثنين : إحداهما : أن الطالب لا يكون إلا مقصودًا بشيء أنه يتوجه<sup>(١)</sup> له ، لا أن يطلبه الطالب متعمدًا .

والأخرى : أنه كلفه بالاجتهاد في التناهي<sup>(٢)</sup> لما أمره بطلبه .

١١٤ — قل : فاذا ذكر الدلالة على ما وصفت ؟

١١٥ — قلت : قال الله عز وجل : ﴿ قَدْ تَرَى تَتَلَبَّ

وَجْهَكَ فِي السَّاءِ فَلَمَّا يَتَذَكَّرْ فِيسَلَةً تَرْضَاهَا ، قَوْلَ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ<sup>(٣)</sup> . و « شَطْرُهُ » : قصده ، وذلك تَلَقُّؤُهُ<sup>(٤)</sup> .

١١٦ — قل : أجل .

(١) ط و ن بتوجهه .

(٢) التناهي : التحري . وانظر الرسالة ( رقمه ١٤٥٦ )

(٣) سورة البقرة آية ١٤٤

(٤) انظر الرسالة ( رقمه ٦٣ — ١٠٤٦٥ — ١٣٧٨ ، ١١١ — ١٣٧٨ — ١٣٨٠ ) .

إلا أن يجد ذلك نصًا في كتاب الله ، أو سنة ، أو إجماع ، أو خبر يدرؤم .

١٠٨ — فما لم يكن داخلًا في واحد من هذه الأخبار فلا يجوز لنا أن نقوله بما استحسننا ، ولا بما خطر على قلوبنا .

ولا نقوله إلا قياسًا على اجتهاد به على طلب الأخبار اللازمة<sup>(١)</sup> .

١٠٩ — ولو جاز لنا أن نقوله على غير مثال ، من قياس يعرف به العوالم من الخطأ — : جاز لكل أحد أن يقول معًا بما خطر على باله . ولكن علينا وعلى أهل زماننا أن لا نقول إلا من حيث وصفت .

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١١٠ — فقال : الذي أعرف أن القوم عليك ضيق إلا بأن يتيسر قياسًا ، كما وصفت . ولي عليك مستلطان :

١١١ — إحداهما : أن تذكر الحاجة في أن لك أن تقيس ،

والتيسر بالحاجة كالخبر ، إنما هو اجتهاد . فكيف ضاق أن تقول على غير قياس ؟ واجعل جوابك فيه أخصر ما يحضر لك .

(١) كتب مصحح ط برلين ، و قاله : بعد طلب الأخبار . ثم قال : وما في الأصل صحيح واضح .

١٢٠ — قل : هذا كرمي . ولكن على إحاطة أنت

من أن تكومن إذا توجهت أصبت ؟

١٢١ — قلت : أفأنا على إحاطة من أني إذا توجهت أصبت

ما كلف ، وإن لم أكف ؟ كثير من هذا — : ففهم

١٢٢ — قل : أفأنا إحاطة أنت من صواب البيت بتوجيه ؟

١٢٣ — قلت : أفأنا شيء كلفت الإحاطة في أصابه ،

البيت<sup>(١)</sup> ؟ لو أفأنا كلفت الاجتهاد .

١٢٤ — وقيل<sup>(٢)</sup> : فما كلفت ؟

١٢٥ — قلت : التوجه شطر المسجد الحرام ، فقد جئت

بالتكليف . وليس أعلم الإحاطة بصواب موضع البيت آدمي

إلا بعيان ، ففأنا ما غاب عنه من غيره<sup>(٣)</sup> فلا يحيط به آدمي .

١٢٦ — قال : فتقول<sup>(٤)</sup> أصبت ؟

(١) والبيت بدل من الإحاطة أي أصبت البيت ؟ وهذه الجهة كلها

استنباهم إنكاري واضح . ولكن مصحح ط زاد فيها وقص ، حذف هـزة

الاستنباهم وحذف كبة البيت ، وزاد حرف و ما ، ، فعارت هكذا : وهذا

شيء ما أصبت الإحاطة في أصابه . والذي في ذاته صحيح ، ولكنه غير ما أراد

الشافعي ، وما أئبنا أقوى وأعلى .

(٢) ط هـ قول هـ حذف الواو .

(٣) ط هـ قول هـ حذف الواو .

(٤) ط هـ فتقول هـ .

١١٧ — قلت : وقيل : لو هو الذي جعل لكم النجوم

تستدلوا بها في ظلمات البر والبحر<sup>(١)</sup> .

١١٨ — وقيل : فسخر لكم النجوم والليل والنهار والشمس

والقمر<sup>(٢)</sup> . وخلق الجبال والأرض .

١١٩ — وجعل مسجد الحرام<sup>(٣)</sup> حيث وضعه من أرضه ،

فكيف خلقه التوجه إليه ، فهم من يركى البيت ، ولا يسمعه<sup>(٤)</sup>

إلا النوايب بالتعبد إليه . ومنهم من يعقب عنه وتعالى دأره

عن موضعه ، فيتموجه إليه بالاستدلال بالنجوم والشمس والقمر

والرياح والجبال والنبات . كل هذا قد يستعمل في بعض

الحالات ، ويكن فيها ، ويستغني بعضها عن بعض<sup>(٥)</sup> .

(١) سورة الأعمام آية ٩٧ واللائحة وهو الذي حذف حرف

العصف من ألها .

(٢) هذا ليس فقط آية ، ولكنه يريد أن القرآن دل على هذا . واللائحة

(٣) وسخر لكم الليل والنهار والشمس والقمر ، والنجوم مسخرات بأمره

— سورة النحل آية ١٢ ط هـ المسجد الحرام هـ وما هنا صحيح لأنه من إضاءة الوصف الى صفته ،

وهو جازي مطلقاً عند الشكوك في ، وتداول عند غيرهم . انظر العبدان على الاثواني

(٤) ١٣٨ : ٣ — ١٤٠ ( والأصناف لابن الأباري ( ص ١٨١ )

(٥) ط هـ فلا يسمعه هـ .

(٥) انظر الرسالة ( رقم ٦٦ — ١١٢٠٦٨ — ١١٤٦ ، ١١٤٥ — ١٤٥٥ ) .

١٣٢ — على الثَّائِبِ يجتهدان فيه. لأنَّ الصَّحَّةَ تَحْتَمِلُ . فَتَعْمُرُ وَتَكْبُرُ ، فَا أَمَرَ الْمَدَائِنِ أَنْ يَحْكُمَ بِالثَّائِبِ إِلَّا مَعَ الْجَهْدِ ،

لَمْ يَجْعَلْ <sup>(١)</sup> الْحُكْمَ عَلَيْهِمَا حَتَّى أَوْعَاهَا بِالنَّثْلِ <sup>(٢)</sup> .

١٣٣ — وهذا يدلُّ على مَنَاحٍ مَا دَلَّتْ عَلَيْهِ آيَةُ قَبْلِهِ ، مِنْ أَنَّهُ

مَحْظُورٌ عَلَيْهِ — إِذَا كَانَ فِي نَيْشِ اجْتِهَادٍ — : أَنْ يَحْكُمَ بِالْاجْتِهَادِ

إِلَّا عَلَى النَّثْلِ . وَلَمْ يُؤْمَرْ فِيهِ ، وَلَا فِي الْقَبْلَةِ إِذَا كَانَتْ مَعْتَبَرَةً

عِنْدَهُ ، فَكَانَ عَلَى غَيْرِ إِحَاطَةٍ مِنْ أَنْ يَصِفِيهَا بِالتَّوَجُّهِ — : أَنْ

يَكُونَ عَلَى يَحْيَى حَيْثُ شَاءَ فِي غَيْرِ اجْتِهَادٍ <sup>(٣)</sup> ، بِطَلَبِ الدَّلَالِ فِيهَا

وَفِي الصِّدِّ مَعًا .

١٣٤ — وَيَدُلُّ عَلَى أَنَّهُ لَا يَحْجُزُ لِأَحَدٍ أَنْ يَقُولَ فِي شَيْءٍ

مِنْ الْعِلْمِ إِلَّا بِالْاجْتِهَادِ . وَالْاجْتِهَادُ فِيهِ كَلَّاجْتِهَادٍ فِي طَلَبِ

الْبَيْتِ فِي التَّجَلُّدِ ، وَنَيْشٍ فِي الصِّدِّ .

١٣٥ — وَلَا يَكُونُ الْاجْتِهَادُ إِلَّا مَنْ عَرَفَ لَدُنَّ عَلَيْهِ ،

(١) ط د ولم يجعل ه ولا نرى ضرورة لزوم الرفع .

(٢) انظر الرسالة في لغات ( رقم ٧٠ ، ١١٧ ، ١١٩ ، ١٣٩٤ — ١٤٠١ ) .

(٣) ط د من غير اجتهاد ه .

١٣٧ — قُلْتُ : نَعَمْ . عَلَى مَعْنَى مَا قُلْتُ ، أَصَبْتُ عَلَى مَا أَمُرْتُ بِهِ <sup>(١)</sup> .

١٣٨ — قُلْتُ : مَا بَصِيحٌ فِي هَذَا جَوَابُ أَبَدًا غَيْرُ

مَا أَجَبْتُ بِهِ .

١٣٩ — لَمْ يَنْبَغِ أَنْ يَقُلْ <sup>(٢)</sup> كَلْتُ الْإِحَاطَةَ بِأَنْ أُصِيبَ — :

لَزِمَ <sup>(٣)</sup> أَنَّهُ لَا يَحِلُّ إِلَّا أَنْ يُحِيطَ بِأَنْ يُصِيبَ أَبَدًا . وَإِنْ

الْفُرْقَانُ لَيْدًا — كَمَا وَصَفْتُ — عَلَى أَنَّهُ إِنَّمَا أَمَرَ بِالتَّوَجُّهِ إِلَى

الْمَسْجِدِ الْحَرَامِ . وَالتَّوَجُّهُ هُوَ النَّاتِجِي وَالْاجْتِهَادُ ، لَا الْإِحَاطَةُ .

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١٤٠ — قُلْتُ : أَذْكَرُ غَيْرَ هَذَا ، إِنْ كَانَ عِنْدَكَ ؟

قَالَ الشَّافِعِيُّ رَحِمَهُ اللَّهُ نَعَمْ :

١٤١ — وَقُلْتُ لَهُ : قَالَ اللَّهُ عَزَّ وَجَلَّ : لَوْ مَنَ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا

سَجَرًا <sup>(١)</sup> [مَثَلًا] مَا قَتَلَ مِنْ النَّعَمِ ، يَحْكُمُ بِهِ ذَوَا عَدْلٍ <sup>(٢)</sup> .

(١) انظر الرسالة ( رقم ١٣٢٦ — ١٣٤٩ ، ١٣٨١ — ١٣٩١ ، ١٤٢٣ — ١٤٣٨ ) .

(٢) قوله ذَوَا عَدْلٍ ه خ كلام مستأنف من الشافعي ، يؤكد الكلامه وتقوية إيمانه .

(٣) ط د يزعم ه وما هنا أجود . (٤) سورة المائدة آية ٩٥ .

بحيث من أن يثبت كنفه - : أن يجزئ شجرة من جنة  
إذ لا يكون فيه علامة العبد . هذا يدل على مدرك عليه ما قبله .

١٣٨ - ويثبت أن لا يجزئ لأحد أن يقول في علم غير

(١) وحيد

☆ ☆

١٣٩ - قل : القم حذيره بدلالة عما يعرف الناس ؟

١٤٠ - قلت : نعم .

١٤١ - قل : وما هي ؟

١٤٢ - قلت : أريت الثوب يختلف في عيبه ، والرقم

وغيره من السلع ، من يريه الحاكم يفتحه ؟

١٤٣ - قل : لا يريه إلا أهل العلم به .

١٤٤ - قلت : لأن حذره مخدنة حال أهل الجلالة ، أن

يعرفوا (٢) أسواقه يوم يرويه ، وما يكون فيه عيباً يفتحه

وما لا يفتحه ؟

١٤٥ - قل : نعم .

(١) النظر الرسالة (رقم ١٤٥٦ - ١٤٦٠) .

(٢) ط و بأن يعرفوا .

العلم

من **خبر لازم** : كتيب (١) أو سيرة . أو إجماع ) ثم يطلب  
ذلك إتيان عليم . بالاستدلال ببعض ما وصفت . كما يطلب  
ما غلب عنه من البيت . واشتبه عليه من مثل العبد .

١٣٦ - فَمَا مَن لَّا آتَاهُ فِيهِ فَلَا يَحِثُّ لَهُ أَن يَقُولَ فِي

العلم شية (٢)

١٣٧ - ومثل هذا : أن الله شرط العبد بالشمود . والعدل

العمل بالخاعة والعقل للشهادة . فإذا ظهر لنا هذه قبلنا شهادة

الشاهد ، على الظاهر ، وقد يمكن أن يكون يستطعن خلافه ،

ولكن لم نكتف العتیب ، فلم يُرخص لنا ، إذا كنا على غير

(١) ط و كذاب . وفي المخطوط ه أو كتاب . وما أثبتنا أحسن ،

بجذف المامف ، لأن السكبات والسنة ما المجرم .

(٢) كل يفتح كثير من أهل عصرنا ، إذ يجهلون على القنوى في الدين ،

وعلى التفسير والتأويل . عن غير علم ، وعن غير بدية . فيفتضحون في ما آرق ليس

لهم منها يخرج . قال الشافعي في الرسالة (رقم ١٣١ ، ١٣٢) : وقالوا يجب على

المالين أن لا يقولوا إلا من حيث علموا . وقد تكلم في العلم من لو أسك عن

بعض ما نزلكم فيه منه لكان الامساك أوفى به ، وأقرب من السلامة له ، إن شاء  
الله . وقال أيضاً (رقم ١٧٨) : ومن تكلف ما جهل وما لم تثبت معرفته :  
كانت موافقته للحواب — إن وافقه من حيث لا يعرفه — : غير محرومة ، والله  
أعلم ، وكان بخطه غير مدفوع ، إذا ما تعلق فيما لا يحيط علمه بالفرق بين الحظا  
والحواب فيه . وانظر أيضاً (رقم ١٤٦٥ - ١٤٧٩) .

غير إحاطة فنحن نقول فيه على غير قياس . ولقيت في النظر  
بسر اليوم والثاني - : لم يكن ذلك لهم ؟

١٥٥ - قال : نعم .

١٥٦ - قلت : فهذا <sup>(١)</sup> من ليس بعد كتاب الله وسنة نبيه

صلى الله عليه وسلم وما قال العلماء ، <sup>(٢)</sup> وعقل <sup>(٣)</sup> - : ليس به

أن يقول من جهة التباس . والوقف في النظر <sup>(٤)</sup>

١٥٧ - ولم جاز لعل أن يدع الاستدلال بالقياس والاجتهاد

فيه جاز للجاهل أن يقولوا . ثم علمهم <sup>(٥)</sup> أعذر بالقول فيه ، لأنه

بأنه خطأ عاماً بغير اجتهاد ، وبأنه جاهل <sup>(٦)</sup>

١٥٨ - قال : أفترجلني <sup>(٧)</sup> في غير ما وصفت أن

للمالين أن يقولوا ؟

١٥٩ - قلت : نعم .

(١) فكذلك وهو خطأ . يعني : وهو عاقل .

(٢) يعني : وعينه التوقف في النظر والتفكير . قال الشافعي في الرسالة ( ريف

١٤٧٦ ) : « فأما من ترجمه ولم يكن عالماً بمتوسطها ، فلا حول له أن يقول

بقياس ، وذلك أنه لا يعرف ما يقاس عليه ، كما لا حول لغيره عاقل أن يقول في غير

درهم ولا خيرة به بسوءه » .

(٣) قال الشافعي في الرسالة ( ريف ١٤٦٧ ) : « ولم يقل إلا خير لأنه ريف  
قياس كان أقرب من فهم من الذي قال وهو غير عاقل ، وكان القول غير حسن  
المعلم جازاً » . (٤) حرف د في هـ . (٥) يذكر في ط .

١٤٦ - قلت : ولا يعرف ذاك ، غيرهم ؟

١٤٧ - قال : نعم <sup>(١)</sup> .

١٤٨ - قلت : ومترجمهم فيه الاجتهاد <sup>(٢)</sup> ، بأن يقيسوا الشيء

بعينه ببعض على سوق يومها ؟

١٤٩ - قال : نعم .

١٥٠ - قلت : وقباسهم الاجتهاد لا إحاطة ؟

١٥١ - قال : نعم .

١٥٢ - قلت : فإن قال غيرهم من أهل العقول : نحن

نجهد ، إذ كنت على غير إحاطة من أن هؤلاء أصابوا ، أليس

تقول لهم : إن هؤلاء يجتهدون عالين ، وأنت تجهل جادلاً ،

فأنت متعسف ؟

١٥٣ - فقال : ما لهم جواب غير . وكفى بهذا جواباً

تقوم به <sup>(٣)</sup> الحجة

١٥٤ - قلت : ولم قال أهل العلم به : إذا <sup>(٤)</sup> كنا على

(١) انظر الرسالة ( ريف ١٤٦١ - ١٤٦٤ ) .

(٢) والاجتهاد وهو خطأ . فقوله « مترجمهم » مبتدأ و « الاجتهاد » خبر .

(٣) انظر الرسالة ( ريف ١٤٥٨ ، ١٤٥٩ ) . وكتاب إبطال الاستحسان  
للشافعي ( ٧ : ٢٧٣ من الأدب ) . (٤) ط و إذا بدل ه إذا هـ .



عن محمد بن إبراهيم التيمي<sup>(١)</sup> عن بشر بن سعيد<sup>(٢)</sup> عن  
 أبي قيس مولى عمرو بن العاص<sup>(٣)</sup> عن عمرو بن العاص أنه سمع  
 رسول الله صلى الله عليه وسلم يقول: «إذا حكم الحاكم فجدد  
 فأصاب فله أجران وإذا حكم فجدد فخطأ فله أجر»<sup>(٤)</sup>.  
 ١٦٤ — وقال يزيد بن الحارث: غدت هذا الحديث<sup>(٥)</sup>  
 أبا بكر بن محمد بن عمرو بن حزم<sup>(٦)</sup>، فقال: هكذا حدثني  
 أبو سلمة<sup>(٧)</sup> عن أبي هريرة<sup>(٨)</sup>.

(١) من أبي تيم بن مرة، قرئني مدني، من ثقات التابعين. مات بالمدينة

سنة ١٢٠

(٢) وبشر، بضم الباء وسكون الين المهملة. وهو من ثقات التابعين من  
 أهل المدينة. مات سنة ١٠٠ وهو ابن ٧٨ سنة.

(٣) أبو قيس هذا تابعي ثقة، وكان أحد فقهاء الوالي. شهد فتح مصر

وانتخب بها. مات سنة ٥٤ (٤) وبشر الحديث.

(٥) هو الأصمعي المدني، من أعلم علماء المدينة، وكان فاضلاً وأمهياً بها،  
 وهو ثقة من شيوخ مالك. مات بعد سنة ١١٠

(٦) هو أبو سلمة بن عبد الرحمن بن عوف الزهري المدني، كان من سادات  
 قرش من التابعين، مات سنة ١٠٤

(٧) هذا الإسناد والذي قبله لطيف واحد في الازدحام. ويعتبران عند علماء  
 الحديث حديثين، لاختلاف الصحابة فيهما. وقد رواها الشافعي أيضاً بهذا  
 الاسنادين في الرسالة (رقم ١٤٠٩، ١٤١٠) وسياقاً مرة أخرى في هذا  
 الكتاب (رقم ٤٥٧، ٤٥٨) ورواها كذلك في كتاب إبطال الاستحسان (٧)

الكتاب من الأم). ورواها حديثان صحيحان. حديث أبي هريرة رواه أحمد وأصحاب  
 الكتب الستة. وحديث عمرو بن العاص رواه أيضاً ما عبد الرزدي. ورواها  
 ابن عبد الحكم في فروع مصر (ص ٢٢٧ — ٢٢٨ طبعة لندن).

١٦٠ — قال: فلا ذكره؟  
 ١٦١ — قلت: لا أعلمه، فقلت: في أن من منى من سلفنا  
 والقرمون بعدهم إلى يوم كذا: قد حكم حاكمهم، وأفنى  
 منيتهم، في أمور ليس فيها نص كتاب ولا سنة. وفي هذا  
 دليل على أنهم إنما حكموا اجتهداً، إن شاء الله تعالى.

١٦٢ — قال: أفترجدني هذا من سنة؟

١٦٣ — قلت: نعم<sup>(١)</sup>. أخبرنا عبد العزيز بن محمد بن

أبي عبيد الله الأوزدي<sup>(٢)</sup> عن يزيد بن عبد الله بن الحارث<sup>(٣)</sup>

(١) هذا في الخطوط زيادة، أخبرنا الربيع، قال أخبرنا الشافعي، قال: وهذه

وهذه الزيادة من روى الكتاب عن الربيع، كمادة العلماء الأقدمين. فانهم لم يصح  
 على اتصال الإسناد في الأحاديث، والأمانة في الرواية، لا يستخبرون رواية حديث  
 إلا إذا وصلوا إسنادهم فيه إلى مؤلف الكتاب. ولذلك ترى كثيراً في الأصول  
 القديمة أن رواية المصنف عن مؤلفها يذكر إسنادهم في النسخ العتيقة إلى مؤلف  
 الكتاب في أول كل باب، أو عند كل حديث، ويكررون ذلك، وتوكيد الصحة  
 الرواية وتثبيتها، وهذه الزيادة في الأصول القديمة هي التي أوجعت بعض أهل النظر  
 ممن لا خبرة لهم بأصول الحديث: أن يفتنوا أن بعض الكتب ليست مؤلفها الأولين.  
 فلجوا في إكثارها وأغفوا خطأ كثيراً.

(٢) هذا الأوزدي نسبة إلى قرية بخرم، كان أبوه منها،

واسمها أن يقولوا: دراجردى، فقلوا: دراجردى. وعبد العزيز هذا ولد  
 بالمدينة، ونسبها، وروى عن علماء وغيرهم، وروى عنه الشافعي وابن مهدي  
 وابن وهب وغيرهم وكان ثقة. مات بالمدينة سنة ١٨٦ وقيل سنة ١٨٩

(٣) هو يزيد بن عبد الله بن أسامة بن الحارث البجلي المدني، ثقة من شيوخ  
 مالك، مات بالمدينة سنة ١٣٩

١٦٧ — ثم كلمني جماعة منهم ، مجتمعين ومتفرقين ، بما لا أخطأ أن أحكي كلام المنفرد عنهم منهم ، وكلام الجماعة ، ولا ما أُجبت به كلاً ، ولا أنه تمّ لي . وقد جودت على تقصي كل ما احتجوا به ، فأثبت أشياء قد قلتها ، ولن قلها منهم ، وذكرت بعض ما أراه منه يكثرهم <sup>(١)</sup> . وأسأل الله تعالى العصمة والتوفيق .

١٦٨ — قال : فكانت جهله قوْلهم أن قالوا : لا يسمع أحداً

من الأحكام ولا من المنفذين <sup>(٢)</sup> أن يُفني ولا يحكم إلا من <sup>(٣)</sup> .

١٦٩ — (والإحاطة لكل ما غاب <sup>(٣)</sup> أنه حق في الظاهر والباطن ،

يُشهد به على الله <sup>(٤)</sup> . وذلك الكتاب والسنة المجتمع عليهما ،

(١) هذا يدل على تحري الشافعي وتوثقه في حكاية مناظراته مع العلماء ، وأنه

يحيي جدلاً وقاملاً وقع بينه وبين علماء عصره ، وذلك كثير في كتبه .

(٢) ط و المنفذين و بياض واحدة ، وهو المعروف في جمع و منفين . ولكن

في المخطوطة بياض ، فأثبتنا ما فيها ، لأن ذلك ثبت أيضاً في الرسالة في أصلها بخط

الريث وهو حجة عندنا . ( انظر الرسالة رقم ٧٦٢ ) .

(٣) ط ه كل علم .

(٤) عبارة المتأخرين : والإحاطة : إدراك الشيء بكامله ظاهراً وباطناً . انظر تزيينات السيد الشريف وكميات أبي البقاء .

١٦٥ — قال الشافعي : فقال : فأسمك تزوي « فإذا اجتهد فأصاب فله أجران . وإذا اجتهد فأخطأ فله أجر <sup>(١)</sup> » ١٩

## باب

حكاية قول من ردّ خبر الخاصة

أخبرنا الربيع قال : قال محمد بن إدريس الشافعي :

١٦٦ — فرأيتنا طائفة في أن تثبت الأخبار عن النبي

صلى الله عليه وسلم لازم للأمة ، ورأوا ما حكيت — بما احتججت

به على من ردّ الخبر — : حجة يثبتونها ، ويثبتون على كل

أحد أن يخالفها <sup>(٢)</sup> .

(١) هذا اعتراف من المناظر لم يجب عنه الشافعي ، اكتماء بجوابه عنه في

الرسالة ( رقم ١٤١٩ — ١٤٢٨ ) . وملخص الإجابة : أن الاجتهاد بباب البر

عليه وإن أخطأ ، بكتاب على الخطأ أجراً واحداً . وليس هذا من الخطأ المأمور عنه ،

لأن المأمور عنه لا ثواب فيه ، بل يرتفع فيه العقاب فقط . ورأنا خطأ هنا أنه أخطأ

المطيع الذي يطلب باجتهاده . ولم يخطئ فيما صنع من الاجتهاد . فإذا أصاب فله

أجران : أجر الاجتهاد الذي كاف به ، وأجر إصابته الحق .

(٢) كتب الشافعي كثيراً في الاحتجاج لإثبات خبر الواحد . فمن ذلك في

الرسالة ( رقم ٩٩٨ — ١٣٠٨ ) ، وفي مواضع أخر منها أيضاً . وفي كتاب

اختلاف الحديث .



(فيحتمل القياس الاختلاف). فإذا اختلفا فاقض ما عند الخائف لمن أقام عليه خلافة أنه مخفي عنده ، وكذلك هو عند من خالقه . وليست هكذا الميزنة الأولى .

١٧٤ — وما قيل قياساً فأمكن في القياس أن يخفى القياس ، لم يخرج عنده أن يكون القياس إحاطة ، ولا يشهد به (١) كنه على الله ، كما زعمت .

١٧٥ — فذكرت أشياء تكرر عندي سوى هذا .

✱ ✱

١٧٦ — فقال بعض من حضره : دعي المسألة في هذا ، وعندنا أنه قد يدخل عليه كثير مما أدخلت عليه ، ولا يدخل عليه كله . قال : فإنا أحدث لك غير ما قال .

١٧٧ — قلت : فاذكره ؟

١٧٨ — قال : العلم من وجوده : منها ما قلته عامة عن عامة ، أشهد به على الله وعلى رسوله ، مثل جمل التراضى .

١٧٩ — قلت : هذا العلم القديم ، الذي لا ينارغك فيه أحد .

(١) ط و لا تشهد به .

(٤)

وكن ما اجتمع الناس ولم يتفرقوا (١) فيه . فالحكم كنه واحد ، يكرهنا ألا نقبل منهم إلا ما قلنا . مثل أن الضير أربع ، لأن ذلك الذي لا يتأرجع (٢) فيه . ولا كافيه له من المسلمين ، ولا يسع أحداً يشك فيه (٣) .

١٧٠ — قلت له : لست أخفيه بخفى عليك ولا على أحد خضرك أنه لا يوجد في علم الخاصة ما يوجد في علم العامة .

١٧١ — قال : وكيف ؟

١٧٢ — قلت : علم العامة على ما وصفت ، لا تلقى أحداً من المسلمين إلا وجدت علمه عنده ، ولا يرز منها أحد شيئاً على أحد فيه ، كما وصفت في جمل التراضى وعدد العلوات وما أشبهها .

١٧٣ — أو علم الخاصة علم السابقين (٤) والتابعين من بعدهم (٥) إلى من لقيت ، تختلف أقاويلهم وتباين تبايناً كثيراً ، فيا ليس فيه نص كتاب ، يتأولون فيه ، ولم يذهبوا إلى القياس (٦)

(١) ط و لم يتفرقوا .

(٢) ط و انك فيه .

(٣) ط و علم تجد السابقين . وزيادة كنه . لا ضرورة لها لسمعة الكلام بدونها .

(٤) ط و التابعين ومن بعدهم .

(٥) ط و وإن ذهبوا إلى القياس ، وهو خطأ .

(٤)

يَبْتَدِئُ إِلَى أَنْ يَنْتَهِيَ - سواء . فَيَكُونُ فِي مَعْنَى الْأَصْلِ .  
١٨٥ - وَلَا يَسْعُ النَّفْسُ فِي شَيْءٍ مَا وَصَفَتْ مِنْ

سَبِيلِ الْعِلْمِ .

١٨٦ - وَالْأَشْيَاءُ عَلَى أَصُولِهَا حَتَّى يَجْتَمَعَ الْعَامَّةُ عَلَى إِزَالَتِهَا عَنْ أَصُولِهَا .

١٨٧ - وَالْإِجْمَاعُ حُجَّةٌ عَلَى كُلِّ شَيْءٍ ؛ لِأَنَّهُ لَا يُمْكِنُ فِيهِ الْخَطَأُ <sup>(١)</sup> .

١٨٨ - قَالَ : قُلْتُ : أَمَّا مَا ذَكَرْتَ مِنَ الْعِلْمِ الْأَوَّلِ ،

مِنْ تَقَالِي الْعَوَامِّ عَنْ الْعَوَامِّ - : فَكَمَا قُلْتَ .

١٨٩ - أَفَرَأَيْتَ الثَّانِي ، الَّذِي قُلْتَ لَا تَخْتَلِفُ فِيهِ الْعَوَامُّ

بَلْ تَجْتَمِعُ عَلَيْهِ ، وَتَحْكِي عَنْ مَنْ قَبْلَهَا الْإِجْمَاعُ عَلَيْهِ - : أَعْرِفُهُ فَتَحَقُّقُهُ ؟ ! أَوْ تَعْرِفُ الْعَوَامِّ الَّذِينَ يَنْتَقِلُونَ عَنْ الْعَوَامِّ ؟ !

أَهْمُ كَيْفَ قُلْتَ فِي جَهْلِ الْفَرَائِضِ ؟ ! فَأَوْتِكَ الْعُلَمَاءُ وَمَنْ لَا يُنْسَبُ إِلَى الْعِلْمِ <sup>(٢)</sup> . وَلَا تَجِدُ أَحَدًا بِالْعِلْمِ فِي الْإِسْلَامِ غَيْرَ

(١) هَذَا آخِرُ كَلَامِ الْمَاضِرِ .

(٢) يَعْنِي : أَنَّ الدِّينَ يَقُولُونَ جَهْلَ الْفَرَائِضِ ، وَهِيَ مَا عِلْمُ بِالْمَضَرُورَةِ مِنَ الدِّينِ - : كَمْ كُلِّ الْمَلِكِ ، مِنْ عَالَمٍ وَغَيْرِ عَالَمٍ ، يَتَقَوَّمُهَا تَقَرُّلاً عَدَمًا ، لَا يَبْتَاعُ فِيهَا أَحَدٌ مَعَهُمْ .

١٨٠ - وَمِنْهَا <sup>(١)</sup> كِتَابُ يَحْتَمِلُ التَّأْوِيلَ فَيُخْتَلَفُ فِيهِ .  
فَإِذَا اخْتَلَفَ فِيهِ فَمَوْ عَلَى ظَاهِرِهِ وَعَالِمُهُ ، لَا يُصَرِّفُ إِلَى بَاطِنِ أَيْبَاءَ ، وَإِنْ احْتَمَلَهُ ، إِلَّا بِإِجْمَاعٍ مِنَ النَّاسِ عَلَيْهِ . فَإِذَا تَفَرَّقُوا فَمَوْ عَلَى الظَّاهِرِ <sup>(٢)</sup> .

١٨١ - قَالَ <sup>(٣)</sup> : وَمِنْهَا مَا اجْتَمَعَ الْمُسْلِمُونَ عَلَيْهِ ، وَحَكَوْا عَنْ مَنْ قَبْلَهُمْ الْإِجْمَاعُ عَلَيْهِ ، وَإِنْ لَمْ يَقُولُوا هَذَا بَكْتَابٍ وَلَا شَيْئًا ، فَقَدْ يَقُومُ عِنْدِي مَقَامُ السُّنَّةِ الْإِجْمَاعِ عَلَيْهَا . وَذَلِكَ : أَنَّ إِجْمَاعَهُمْ <sup>(٤)</sup> لَا يَكُونُ عَنْ رَأْيٍ ، لَأَنَّ الرَّأْيَ إِذَا كَانَ مُتَّفِقًا فِيهِ .

١٨٢ - [ قُلْتُ ] <sup>(٥)</sup> : فَصِفْ لِي مَا بَعْدَهُ ؟

١٨٣ - قَالَ : وَمِنْهَا عِلْمُ الْخَاصَّةِ . وَلَا تَقُومُ الْحُجَّةُ بِعِلْمِ الْخَاصَّةِ حَتَّى يَكُونَ تَقَالِي مِنَ الْوَجْهِ الَّذِي يُؤْمَنُ فِيهِ الْغُلَاطُ .

١٨٤ - ثُمَّ آخِرُ هَذَا الْقِيَاسُ . وَلَا يَقَاسُ مِنْهُ الشَّيْءُ بِالشَّيْءِ حَتَّى يَكُونَ مَبْتَدَاهُ وَمَصْدَرُهُ وَمَقْصِدُهُ - فَيَا بَيْنَ أَنْ

(١) هَذَا بَقِيَّةُ كَلَامِ الْمَاضِرِ . (٢) انْظُرِ الرَّسَالَةَ ( رَقْف ٨٨١ ، ٨٨٢ ، ٨٨٣ ) .

(٣) بَقِيَّةُ كَلَامِ الْمَاضِرِ أَيْضًا . (٤) ط لَا اجْتِمَاعَهُمْ .

(٥) الزِّيَادَةُ مِنْ ط . وَهِيَ ضَرُورِيَّةٌ ، لِأَنَّ هَذَا صُلْبٌ مِنَ النَّاقِصِ ، يُطْلَبُ مِنْ مَاضِرِهِ بِأَقْدَامِ كَلَامِهِ .

متفرقين علمت أن من كان قبلهم كانوا متفرقين من كل قرن .  
وسواء كان اجتماعهم من خير يحكونه أو غير خير ، للاستدلال  
أنهم لا يجتمعون <sup>(١)</sup> إلا بخير لازم . وسواء إذا تفرقوا حكموا  
خبرا بما وافق بعضهم أو لم يحكموه ، لأنني لا أقبل من أخبارهم  
إلا ما أجمعوا <sup>(٢)</sup> على قولهم ، فاما ما تفرقا في قبوله فإن الغلط  
يمكن فيه ، فلم تتم حجة بأمري يمكن فيه الغلط .

١٩٣ — قال : قلت له : هذا تجرؤ إبطال الأخبار ،  
وإثبات الإجماع ، لأنك زعمت أن اجتماعهم حجة ، كن فيه  
خبرا أو لم يكن فيه ، وأن افتراقهم غير حجة ، كن فيه خبرا  
أو لم يكن فيه !

☆  
☆

١٩٤ — قلت له : ومن أهل العلم الذين إذا أجمعوا قامت

باجتماعهم حجة ؟

١٩٥ — قال : هم من نكبه أهل بلاد من البلدان قبيحا ،  
رضوا قوله وقبلا حكمه .

(١) ط ه لا يجتمعون . (٢) ط و اجمعوا .

مغلوب على عقده يشك أن فرض الله أن الخبر أربع . أم هو  
وجه غير هذا ؟

١٩٠ — قل : بل هو وجه غير هذا .

١٩١ — قلت : فصفه ؟

١٩٢ — قال : هذا إجماع العلماء ، دون من لا علم له ،  
يجب اتباعهم فيه ، لأنهم متفردون بالعلم بدورهم ، مجتمعون <sup>(١)</sup>  
عليه . فإذا اجتمعوا قامت بهم الحجة على من لا علم له .  
وإذا تفرقوا لم ينم بهم على أحد حجة ، وكان الحق فيما  
تفرقا فيه أن يراد إلى القياس على ما اجتمعوا عليه . فأي  
حال وجدتهم بها رأيتني على حال من قبلهم : إن كانوا مجتمعين  
من جهة علمت أن من كان قبلهم من أهل العلم مجتمعون من  
كل قرن ، لأنهم لا يجتمعون من جهة <sup>(٢)</sup> . فإن كانوا <sup>(٣)</sup>

(١) ط ه متفردين . ه مجتمعين . وهو خطأ ، لأن مصححيها فهم أنها  
حالات ، وظن أن معنى السكوت : لأنهم في حال انفرادهم أقل منهم في حال اجتماعهم ،  
وهو كلام لا فائدة فيه هنا . وإنما المراد : لأن العلماء — في المسائل التي يدعى فيها  
إجماعهم — متفردون بها دون العامة ، وهم في أنفسهم مجتمعون عليها . فبما  
شيران لا حالان . (٢) هنا بجانب ط ما أنه : ه في العبارة سقط ، وليس  
الأصل : لأنهم لا يجتمعون من جهة إلا وهم مجتمعون من كل جهة . تأمل . وعبارة  
الأصل صحيحة ليس فيها سقط ، معناه : لأنهم لا يجتمعون من جهة واحدة فقط  
دون أخرى . (٣) ط « وإن كانوا » .

تنتهي <sup>(١)</sup> إلى قوله ، وتضمنه الموضع الذي وصفته ، أيدخلون  
في النقيض الذين لا يُقبل من النقيض حتى يجتمعوا معهم ،  
أم خارجون منهم ؟

٢٠٥ — قال : فإن قلت : إنهم <sup>(٢)</sup> داخلون فيهم ؟

٢٠٦ — قلت : فإن شئت قتله !

٢٠٧ — قال : فقد قلته !

٢٠٨ — قال <sup>(٣)</sup> : فما تقول في السح على الخفين ؟

٢٠٩ — قال : فإن قلت : لا يسح أحد ، لأنني إذا

اختلفا في شيء رددته إلى الأصل ، والأصل العوضه ؟

٢١٠ — وكذلك تقول في كل شيء <sup>(٤)</sup> ؟

٢١١ — قال : نعم .

٢١٢ — قلت : فما تقول في الزاني الثيب ، أترجعه ؟

٢١٣ — قال : نعم .

٢١٤ — قلت : كيف ترجمه ؟ ومن نص بعض الناس علماء

(١) ط وما تنتهي . وهو خطأ . (٢) ط و غيره .

(٣) وقال : يعني الشافعي رحمه . وهو كثيراً ما يفتح وقلاً موضع مفت .

(٤) هذا سؤال آخر من قول الشافعي ، بخلاف وقلت من أوله . وقد

زيدت في ط .

١٩٦ — قلت <sup>(١)</sup> : فمثل الفقهاء الذين إذا أجمعوا كانوا  
حجة . أرايت إن كانوا عشرة فقاب واحد ، أو حصر ولم  
يتكلم ، اتجمل التسمة إذا اجتمعوا أن يكون قولهم حجة ؟

١٩٧ — قال : فإن قلت : لا ؟

١٩٨ — قلت : أرايت إن مات أحدكم ، أو غلب على

عقله ، أكون للتسمة أن يقولوا ؟ !

١٩٩ — قال : فإن قلت : نعم ؟

٢٠٠ — وكذا <sup>(٢)</sup> لو مات خمسة ، أو تسعة ، للواحد أن يقول ؟

٢٠١ — قال : فإن قلت : لا ؟

٢٠٢ — قلت : فأني شيء قلت فيه كن متناقضاً !

٢٠٣ — قال : قدع هذا !

٢٠٤ — قلت : فقد وجدت أهل الكلام منتشرين في

أكثر البهتان ، فوجدت كل فرقة تنصب منهم نصيب منها من

(١) هذه المناظرة الآتية أقوى ما قرأت في نقض الاجماع الذي يدعيه كثير من

الفقهاء ، وفي علم الخاصة ، وفي المسائل الفرعية ، التي لا يرد فيها نص صريح ، ولم

تكن مما يعلم من الدين بالضرورة . فله در الشافعي ، رحمه الله ورضي عنه .

(٢) هذا سؤال آخر من قول الشافعي ، بخلاف وقلت . وكثيراً ما يفتح  
هذا في كتبه ، بخلاف وقال و و قلت ، اعتماداً على فهم الثوري .

refer. Ibn Kaldun  
Mat-Proh  
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٢٢٠ — قلتُ: أَتَحْتَفِظُ النَّبِيَّاتِ الَّذِينَ لَا تَنْظُرُ إِلَيْهِمْ؟ أَمْ هُمْ  
إِنْ كَانُوا أَقْبَى مِنْ نَفْسِ النَّاسِ أَوْ فَالَيْهِمْ أَوْ رِيعِيهِمْ؟

٢٢١ — قال: مَا اسْتَطِيعُ أَنْ أَخُدَّهُمْ، وَلَكِنْ الْأَكْثَرُ.

٢٢٢ — قلتُ: أَفَعَسْرُثُ أَكْثَرُ مِنْ تَسْمِيَةٍ؟

٢٢٣ — قال: هُوَ لَا، بِمِثْقَالِ بَرٍّ.

٢٢٤ — قلتُ: فَخُدَّاهُمْ بَا شَتَّى؟

٢٢٥ — قال: مَا أَفِيدُ أَنْ أَخُدَّهُمْ.

٢٢٦ — قلنا<sup>(١)</sup>: فَكَأَنَّكَ أُرِدْتَ أَنْ تَجْمَعَ هَذَا الْقَوْلَ

مِطَافًا غَيْرَ مَحْدُودٍ، فَإِذَا أَخَذْتَ بِقَوْلِ اخْتَلَفَ فِيهِ قُلْتَ: عَلَيْهِ

الْأَكْثَرُ! وَإِذَا أُرِدْتَ رَدَّ قَوْلٍ قُلْتَ: هُوَ لَا الْأَقْلَى! أَفَتَرَضَى

مِنْ غَيْرِكَ بِمِثْلِ هَذَا الْجَوَابِ؟

٢٢٧ — رَأَيْتَ جِئْتَ صَرْتَ إِلَى أَنْ دَخَلْتَ فَمَا صَبَتْ

مِنْ التَّفَرُّقِ<sup>(٢)</sup>؟!

(١) ط وَفَاتَ.

(٢) جملة إستهلامية إنكارية، بجذف هزة الاستهلام. كأنه الثاني يقول

له: أَرَأَيْتَ عَاتِيَةً قَوْلَكَ جِئْتَ صَرْتَ إِلَى أَنْ دَخَلْتَ فَمَا صَبَتْ فِيهِ مِنَ التَّفَرُّقِ؟

ومصحح ط لم يدرك الثاني تماماً فغير أول الجملة، وجعلها: وَأَرَأَيْتَ جِئْتَ صَرْتَ.

وهو تصرف غير جيد، أخرج به الكلام عن موضعه وعن قوته.

أَنْ لَا رَجْعَ عَلَى زَانٍ<sup>(١)</sup>. يقول الله تعالى: وَالزَّانِيَةُ وَالزَّانِي  
فَجَزَاءُ مَا كَفَرُوا وَاحِدٌ مِمَّنْ مَدَّ يَدَهُ جَدِيدًا<sup>(٢)</sup>. فكيف ترجمته وما ترد

إِلَى الْأَصْلِ، مِنْ أَنَّ دَمَهُ مُحَرَّمٌ، حَتَّى يَجْتَمِعَا عَلَى تَحْلِيلِهِ؟

وَمِنْ قَالَ هَذَا الْقَوْلَ يَحْتَجُّ بِأَنَّهُ زَانٍ دَاخِلٌ فِي مَعْنَى الْآيَةِ،

وَأَنْ يُجَادَّ مَا هَهُ؟

٢١٥ — قال: إِنَّ أَصْنُفَكَ هَذَا دَخَلَ عَلَيْ فِيهِ شَيْءٌ

تَجَاوَزَ التَّدْرُكَ كَثْرَةً<sup>(٣)</sup>؟

٢١٦ — قلتُ: أَجَبَ.

٢١٧ — قال: فَلَا أُعْطِيكَ هَذَا، وَجِئْتُكَ فِيهِ غَيْرَ

الْجَوَابِ الْأَوَّلِ!

٢١٨ — قلتُ: قُلْ؟

٢١٩ — قال: لَا أَنْظُرُ إِلَى قَلِيلٍ مِنَ الْمُفْتِنِينَ<sup>(٤)</sup>، وَأَنْظُرُ

إِلَى الْأَكْثَرِ.

(١) الكلام واضح صحيح في المخطوط، وقد غيرته مصحح ط فجاء: وَوَقَدْ

نَسَّ بَعْضُ النَّاسِ الْمَلَاءَ، قَالَ لَارْجِعْ عَلَى زَانٍ. وللمصحح أصلاً، ولكن لإداعي

لتغيير ما في الأصل. . . . . سورة النور آية ٢

(٢) ط وَجَاوَزَ الْعَدْرَ كَثْرَةً. (٤) ط وَالْمُفْتِنِينَ، يَاءً وَاحِدَةً.

وأنظر ما سبق في حاشية الغررة (رقم ١٦٨).

إجماعهم كلهم ؟ ولا تقوم الحجة على أحد حتى تثبتهم كلهم ،  
أو تثبت عامة عن عامة عن كل واحد منهم<sup>١٩</sup> .

٢٣٤ — قال : ما يوجد هذا .

٢٣٥ — قلت : فإن قبلت عنهم بقايا الخاصة فقد قبلت  
فيما عبت ، وإن لم تقبل عن كل واحد إلا بقيا العامة لم  
تجد في أصل قولك ما اجتمع عليه البدان ، إذا لم تقبل نقل  
الخاصة ، لأنه لا سبيح إليه ابتداء ، لأنهم لا يجتمعون لك  
في موضع ، ولا تجد الخبر عنهم بقيا عامة عن عامة ؟ !

✱ ✱

٢٣٦ — قلت : فأنت تعلمت قلت أهل الحديث<sup>(١)</sup> ، وعم عندك

يخضعون فيما يدينون به من قول الحديث ، فكيف تأمهم على  
الخطأ فيما قلدهم الثقة ونسبوه إليه ؟ ! فأسمعت قلت من  
لا ترضاه . وأقننه الناس عندنا وعند أكثرهم اتباعهم للحديث ،

(١) نعم ، قال أهل الحديث إذا روى أقوال علماء بغل خاصة ، أي

بالإسناد إليهم شيئا عن شيخ . كما يروى أهل الحديث رويهم ، بل إن الذي  
يروى أقوال الفقهاء بالإسناد هم أهل الحديث أنفسهم .

٢٣٨ — أريت لو كان للفقهاء كلهم عشرة ، فرغمت أنك  
لا تقبل إلا من الأكثر ، فقال ستة فاتفقوا ، وخالفهم أربعة ،  
أليس قد شهدت للسته بالصواب ، وعلى الأربعة بالخطأ ؟

٢٣٩ — قال : فإن قلت : بلى ؟

٢٤٠ — قلت : يقال الأربعة في قول غيره ، فاتفق اثنان

من الستة معهم ، وخالفهم أربعة ؟

٢٤١ — قال : فأخذ بقول الستة .

٢٤٢ — قلت : فتدع قول المصين بالاثنين ، وتأخذ بقول  
الخطئين بالاثنين ، وقد أمكن عليهم مرة<sup>(١)</sup> ، وأنت تذكر قول  
ما أمكن فيه الخطأ ؟ وهذا<sup>(٢)</sup> قول متناقض !

✱ ✱

٢٤٣ — وقت له : أريت قولك : لا تقوم الحجة إلا بما  
أجمع عليه الفقهاء في جميع البدان — : أجد السبل إلى

(١) يعني : وقد أمكن الخطأ على الأربعة الأوائل مرة ، بأخذك بقول الستة

دورهم ، وإذا أمكن عليهم الخطأ فلا يرفع إمكانه عنهم موافقة الدين لهم في قول  
آخر ، فقولهم الآخر مع الدين الآخرين لا يرفع عن احتمال الخطأ ، لأن هذا الجواب  
يجب أن يكون قطعيا لا يحتمل الخطأ .

(٢) ط ه فهذه .



قول عطاء<sup>(١)</sup> . وبنيهم من كن يفتخر عليه . ثم أفتى بها الزنجي بن خالد<sup>(٢)</sup> . فكان منهم من يُقدمه في الفتنة ، ومنهم من لا يقول سيد بن سالم<sup>(٣)</sup> . ومن أصحاب كل واحد من هذين يستغفرون الآخر<sup>(٤)</sup> ، ويتجاوزون التحد.

٢٤٢ — وعلمت أن أهل المدينة كانوا يُقدمون سيد بن

السبب<sup>(٥)</sup> ، ثم يتركون بعض قوله . ثم حدث في زماننا منهم مالك<sup>(٦)</sup> ، كان كثير منهم من يُقدمه ، وغيره يُسرف عليه

(١) هو عطاء بن أبي رباح — بفتح الراء وتخفيف الباء — فقيه أهل مكة ومفتيهم ، من ثقات التابعين ، كان فقيها عالما كبير الحديث . مات سنة ١١٤ من ١٠٠ سنة .

(٢) هو الزنجي ، لقبه ، واسمه مسلم بن خالد بن فروة ، وهو للمكي الفقيه ، شيخ الشافعي ، أخذ عنه الفقه وسمع منه الحديث . وقد ضمنه بعض العلماء في رواية الحديث ، من قبل حفظه ، وألقوا أنه ثقة . مات بمكة سنة ١٧٩ .

(٣) هو القماح ، فقيه مكي ، أخذ عنه الشافعي ، وروى عنه كثيراً . مات قبل سنة ٢٠٠ .

(٤) ط د وأصحاب كل واحد من هذين يصغفون الآخر .

(٥) هو فقيه التابعين وأعلمهم ، وسيد الزهاد في عصره . وهو الذي خطب إليه عبد الملك بن مروان ابنه ولي عهده الوليد ، فأبى ، ثم زوجها على درهمين لأحد تلاميذه الفقهاء ، وهو كثير بن أبي وداعة . وقصته في ذلك مشهورة . مات سنة ٩٤ وعمره ٧٥ سنة .

(٦) هو مالك بن أنس الإمام ، عالم أهل المدينة ، وشيخ الشافعي ، ولد سنة ٩٣ ومات في ربيع الأول سنة ١٧٩ .

وذلك أجابهم<sup>(١)</sup> ، لأن الجبل عندنا خير من الانفراد ، وكذلك أكثر ما يحتاجون فيه إلى التقية ، ويُغفلون به ، مع أن الذي ينبغي غير موجود في الدنيا !

٢٣٧ — قال : وكيف<sup>(٢)</sup> لا يُوجد<sup>(٣)</sup> ؟

٢٣٨ — قال هو أو بعض<sup>(٤)</sup> من حضر معه : فأني أقول :

إنما أنظر في هذا إلى من يشهد له أهل الحديث بالفقه .

٢٣٩ — قلت : ليس من بلدي إلا وفيه من أهله الذين هم

بمثل صفته يدفعونه عن الفقه ، وتُسيبه<sup>(٥)</sup> إلى الجبل ، أو إلى أنه لا يحل له أن يفتي ، ولا يحل لأحد أن يقبل قوله .

٢٤٠ — وعلمت تفرق أهل كل بلدي بينهم ، ثم علمت تفرق كل بلدي في غيرهم .

٢٤١ — فقلنا أن من أهل مكة من كان لا يكاد يخالف

(١) يعني : وذلك أجابهم عندك . (٢) ط د فكيف .

(٣) لم يجب الشافعي عن هذا ، لأنه لا يحتاج إلى جواب . وقد صدق ، فإن الذي ينصف — في كل وقت وفي كل حال — غير موجود في الدنيا .

(٤) ط د وبعض .

(٥) ط د وبنيهم . وما في الأصل صحيح ، يعني : وتنبه الجماعة التي تدفعه عن الفقه .

إلى قول أبي يوسف . يَدْمُونَ مَذَاهِبَ بْنِ أَبِي تَيْلٍ وَمَا خُفَّ  
أَبَا يَوْسُفَ . وَآخِرِينَ يَمْلِكُونَ إِلَى قَوْلِ الثَّوْرِيِّ <sup>(١)</sup> . وَآخِرِينَ  
إِلَى قَوْلِ الْحَسَنِ بْنِ صَالِحٍ <sup>(٢)</sup> .

٢٤٤ — وَبَلَغَنِي غَيْرُ مَا وَصَفْتُ مِنْ بُلْدَانٍ ، شَدِيدَةٍ بِمَا رَأَيْتُ  
تَمَّا وَصَفْتُ مِنْ تَفَرُّقِ أَهْلِ الْبُلْدَانِ .

٢٤٥ — وَرَأَيْتُ **[السَّكِينِ]** يَنْعَمُونَ إِلَى تَقْدِيمِ عَطَاءٍ فِي الْعِلْمِ  
عَلَى التَّالِعِينَ ، وَفِي بَعْضِ الْعِرَاقِيِّينَ مَنْ يَذْهَبُونَ <sup>(٣)</sup> إِلَى تَقْدِيمِ  
إِبْرَاهِيمَ النَّحَّيْعِيِّ <sup>(٤)</sup> .

٢٤٦ — ثُمَّ اتَّعَاكَ صَنْفٍ مِنْ هَؤُلَاءِ ، قَدَّمَ صَاحِبَهُ أَنْ  
يُسْرَفَ فِي الْمُنَابَهَةِ بَيْنَهُ وَبَيْنَ مَنْ قَدَّمَ عَلَيْهِ مِنْ أَهْلِ الْبُلْدَانِ .  
٢٤٧ — وَهَكَذَا رَأَيْنَاهُمْ فِيمَنْ نَصَبُوا مِنَ الْعُلَمَاءِ الَّذِينَ أُذِرُوا كُنَا .

(١) هُوَ سَفِيَّانُ بْنُ سَعِيدِ بْنِ مَسْرُوفٍ الثَّوْرِيُّ السَّكُونِيُّ ، شَيْخٌ لَأَقَّةٍ ، أَمِيرُ  
الْمُؤَسَّسِينَ فِي الْمَدِينَةِ ، سَادَ النَّاسَ بِالْوَرَعِ وَالْعِلْمِ . وَلَدَ سَنَةَ ٩٧ وَمَاتَ بِالْبَصْرَةِ فِي  
شَهْرِ رَجَبِ سَنَةِ ١٦١ .  
(٢) هُوَ الْحَسَنُ بْنُ صَالِحِ بْنِ صَالِحِ بْنِ حُجِيِّ الْخَمْدَنِيِّ . كُنَّ تَلَسَّكًا عَائِلًا بِقُرْبَاهَا لَأَقَّةً ،  
وَكَلَّمَ فِيهِ بَعْضُهُمْ بِغَيْرِ حُجَّةٍ . وَلَدَ سَنَةَ ١٠٠ وَمَاتَ بِالْمَكَّةِ سَنَةَ ١٦٧ .  
(٣) فِي الْخَطِّ مَعْرُوفٌ وَفِي بَعْضِ التَّالِعِينَ يَذْهَبُونَ . وَهُوَ خَطٌّ لَا مَعْنَى لَهُ .  
فَتَصَحَّحْتُ فِي طَرَفِ عَكَاظِنَا : وَفِي بَعْضِ التَّالِعِينَ يَذْهَبُونَ . وَهُوَ غَيْرُ مَعْنِي . وَفِي  
مَا صَحَّحْتُهُ إِلَيْهِ أَقْرَبُ إِلَى خَمْدَنٍ .  
(٤) هُوَ إِبْرَاهِيمُ بْنُ يَزِيدَ النَّحَّيْعِيِّ السَّكُونِيُّ الْفَقِيهَ . كَانَ مَعْنَى أَعْسَ مَكْرُوفَةً .  
بَاتَ سَنَةَ ٩٦ أَوْ قَدْ قَرِيبَ خَمْدَنٍ .

فِي تَضْعِيفِ مَذَاهِبِهِمْ <sup>(١)</sup> . قَدْ <sup>(٢)</sup> رَأَيْتُ ابْنَ أَبِي الرَّثَادِ <sup>(٣)</sup> يُجَاهِزُ  
التَّصَدِّقَ فِي دَمِّ مَذَاهِبِهِ . وَرَأَيْتُ **[الغُبَيْرَةَ]** <sup>(٤)</sup> **[أَبَانَ]** **[أَبَانَ]** حَازِمٍ <sup>(٥)</sup>  
وَالدَّارَكَوَرْدِيَّ <sup>(٦)</sup> يَذْهَبُونَ مِنْ مَذَاهِبِهِ ، وَرَأَيْتُ مَنْ يَذْهَبُ .

٢٤٣ — وَرَأَيْتُ **[الْمَكُونَةَ]** <sup>(٧)</sup> قَوْمًا يَمْلِكُونَ إِلَى قَوْلِ ابْنِ أَبِي  
تَيْلٍ <sup>(٨)</sup> ، يَدْمُونَ مَذَاهِبَ أَبِي يَوْسُفَ <sup>(٩)</sup> . وَآخِرِينَ يَمْلِكُونَ

(١) أَيْ : مَذَاهِبَ مَالِكٍ وَأَصْحَابِهِ . وَفِي طَرَفٍ وَبَعْضُ مَذَاهِبِهِ .  
(٢) طَرَفٌ وَوَقْدٌ وَبِرَّادَةُ الرَّادِ .  
(٣) هُوَ عَبْدُ الرَّحْمَنِ بْنُ أَبِي الرَّثَادِ الْمَدَنِيُّ ، فُقِيهٌ مَحْدُودٌ ، وَكَلَّمَ بَعْضَ الْمَدِينِيِّينَ  
فِي رِوَايَتِهِ ، وَاطَّلَعَ أَنَّهُ فُقِيهٌ حَافِظٌ ، كَمَا قَالَ التِّرْمِذِيُّ . وَلَدَ سَنَةَ ١٠٠ وَمَاتَ بِبَغْدَادَ  
سَنَةَ ١٧٤ .

(٤) هُوَ الْغُبَيْرَةُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْحُرْثِ بْنِ عَبْدِ اللَّهِ بْنِ عِيَّاشِ بْنِ أَبِي  
رَبِيعَةَ الْخَزْرَجِيِّ الْمَدَنِيِّ ، فُقِيهٌ أَهْلُ الْمَدِينَةِ بَعْدَ مَالِكٍ ، وَلَدَ سَنَةَ ١٢٤ أَوْ سَنَةَ ١٢٥  
وَمَاتَ فِي صَفَرِ سَنَةِ ١٨٦ .  
(٥) فِي النُّسخِ دِينَارُ الْمَدَنِيِّ الْفَقِيهَ ، وَلَمْ يَكُنْ بِالْمَدِينَةِ بَعْدَ مَالِكٍ أَفْقَهُ مِنْهُ . وَلَدَ سَنَةَ ١٠٧  
وَمَاتَ فِي صَفَرِ سَنَةِ ١٨٦ .

(٦) هُوَ تَرْجَمَةٌ فِي (رَقْمِ ١٦٣) .  
(٧) هَذَا صَرِيحٌ فِي أَنَّ التَّالِعِيَّ دَخَلَ الْمَكُونَةَ ، وَلَمْ أَجِدْ مِنْ صَرَحَ بِذَلِكَ فِي  
تَرْجُمَتِهِ ، فَهِيَ فَائِدَةٌ زَائِدَةٌ لِنِسْبَتِهِ مِنْ هَذَا الْكِتَابِ .  
(٨) هُوَ مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لُبَيْبٍ الْأَنْصَارِيُّ السَّكُونِيُّ الْفَقِيهَ ، وَفُقِيهٌ  
الْمَكُونَةُ ، فُقِيهٌ عَالِمٌ ، وَكَلَّمَ فِيهِ بَعْضُ أَهْلِ الْمَدِينَةِ مِنْ قَبْلِ حَقِيقَتِهِ ، وَاطَّلَعَ أَنَّهُ  
صَدُوقٌ ، وَوَقَدْ حَسَّنَ لَهُ التِّرْمِذِيُّ حَدِيثًا ، وَكَلَّمَنا عَلَيْهِ فِي مَرَحَلَتِنَا عَلَى التِّرْمِذِيِّ  
(رَقْمِ ٣٦٤ ، ٥٥٢) . مَاتَ سَنَةَ ١٤٨ .

(٩) هُوَ يَحْيَى بْنُ إِبْرَاهِيمَ بْنِ حَبِيبِ بْنِ لُحَيْسٍ الْأَنْصَارِيُّ ، صَاحِبُ أَبِي  
حَقِيقَةٍ ، قَاضِيُ الْقَضَاءِ فِي أَيَّامِ الْإِمَامِ الْإِسْلَامِيِّ وَالْهَادِي وَالرَّشِيدِ ، مَاتَ فِي رَجَبِ الْآخِرِ سَنَةَ ١٨٢  
حَقِيقَةً ، قَاضِيُ الْقَضَاءِ فِي أَيَّامِ الْإِسْلَامِيِّ وَالْهَادِي وَالرَّشِيدِ ، مَاتَ فِي رَجَبِ الْآخِرِ سَنَةَ ١٨٢



٢٥٢ — فتيل له : فإن لم يُجمعوا<sup>(١)</sup> لك على واحد منهم

أنه في غاية ، فكيف جعلته عالماً ؟

٢٥٣ — قال : لا ، ولكن يجتمعون على أنه يعلم من العلم .

٢٥٤ — قلت : نعم . ويجتمعون لك على أن من لم ندخله

في جملة العلماء فإن أهل الكلام يعلمون من العلم<sup>(٢)</sup> ، فلم قدّمت

هؤلاء وتركتمهم في أكثر هؤلاء ، أهل الكلام<sup>(٣)</sup> ؟

٢٥٥ — وما أسئلك وطريقك إلا يطريق التفريق ، إلا أنك

تجمله إلى ذلك أن تدعي الإجماع !

٢٥٦ — وإن في دعواك الإجماع لخصالاً يجب عليك في

أصل مذاهبك أن تنتقل عن دعوى الإجماع في علم الخاصة .

\*\*\*

٢٥٧ — قال : قول من إجماع ؟

٢٥٨ — قلت : نعم ، نحمد الله ، كثير في جملة الفرائض

التي لا يسع جهلها ، وذلك<sup>(٤)</sup> الإجماع هو الذي لو قلت :

(١) حرف ولم — سقط من النسخين ، وزيادة ضرورية لصحة الكلام .

(٢) يعني : وأهل العلم متفقون على أن أهل الكلام يعلمون من العلم .

(٣) أهل الكلام ، بدل من هؤلاء . . يعني : وترك تركهم في أكثر

أهل الكلام . (٤) ط و ذلك .

٢٥٨ — فإذا كان أهل الأمر يختلفون هذا الاختلاف .

فسمعت بعض من يعني منهم يخاف بالله : ما كن للآخر أن

تنتهي عقله وجهانيته ! وما كن يحال للآخر أن يسكت !

يعني آخر من أهل العلم . ورأيت من أهل البلبان من يقول :

ما كن يحال له أن يعني بجهانيته ! يعني الذي زعم غيره أنه

لا يحال له أن يسكت ، لفضل علمه وعقله ! !

٢٥٩ — ثم وجدت أهل كل بلد كما وصفت في بينهم من

أهل زمانهم .

٢٥٠ — فأين اجتمع لك هؤلاء ، على (تفقه واحد) أو تفقه

عالم ، وكما وصفت رأيهم أو رأي أكثرهم ، وبلغني عن من

غاب عني منهم شبيه بهذا ؟ فإن أجمعوا لك على نفر منهم

فتجعل أولئك النفر علماء ، إذا اجتمعوا على شيء قبلته ؟ !

٢٥١ — قال : وإنهم إن تفرقوا — كما زعمت — باختلاف

مذاهبيهم أو تأويل أو تفاسير<sup>(١)</sup> أو تفاسير على بعض — :

فإنما أقبل منهم ما اجتمعوا عليه معاً .

182, 184 dialogue between scholars and  
Amr al-Basari al-Shaykhani.

٢٦١ — قال : فقال : قد ادعى بعض أصحابك الإجماع فيما

ادعى من ذلك <sup>(١)</sup> ، فما سمعت منهم أحداً ذكر قوله إلا عائناً

لذلك ، وإن ذلك عندي لمعيب ؟

٢٦٢ — قلت : من أين عنيته وعابره ؟ إنما <sup>(٢)</sup> ادعاء الإجماع

في فرقة أخرى أنف يذكرك من ادعائك الإجماع على الأمة

في الدنيا !

٢٦٣ — قال : إنما عنابه أنا نجد في اللدنية اختلافاً في

كل قرن ، فيما يدعي فيه الإجماع . ولا يجوز الإجماع إلا على

ما وصفته من أن لا يكون مخالفاً . ولعل الإجماع عنده

الأكثر ، وإن خالفهم الأقل . فليس ينبغي أن يقول « إجماعاً »

ويقول « الأكثر » ، إذا كان لا يروي عنهم شيئاً . ومن لم

يؤروه عنه شيء في شيء لم يجوز أن ينسب إلى أن يكون جميعاً

على قوله ، كما لا يجوز أن يكون منسوباً إلى خلافه <sup>(٣)</sup> .

(١) يريد بعض أصحابه هنا مالك بن أنس ، إمام أهل المدينة ، شيخ الشافعي ،

فانه يحكي في كثير من أدلته على قوله إجماع أهل المدينة .

(٢) ط ورواها .

(٣) هذا كقول الشافعي في اختلاف الحديث ( ص ١٤٣ ) : « ولا ينسب إلى سائر قول قائل ، ولا عمل عامل . إنما ينسب إلى كل قوله وعمله . وفي هذا ما يدل على أن ادعاء الإجماع ، في كثير من حاشي الأحكام ليس كما يقول من يدعيه . »

أجمع الناس — : لم نجد حولك أسماً يعرف شيئاً يقول لك

ليس هذا بإجماع .

٢٥٩ — فلهذه الطريق التي يصدق بها من ادعى الإجماع

فيها ، وفي أشياء من أصول العلم دون فروعها ، ودون الأصول

غيرها <sup>(١)</sup> .

٢٦٠ — فأما ما ادعيت من الإجماع حيث قد أدركت

التفرقة في دهرك ، ويحكي <sup>(٢)</sup> عن أهل كل قرن — :

فانظره : أيجوز أن يكون هذا إجماعاً ؟

(١) هذا الذي صرح به الشافعي : أن الإجماع إنما هو في المسائل المعروفة من

الدين ضرورية ، قد صرح بنحوه في كتبه الأخرى ، فقال في الرسالة ( رقم

١٥٥٩ ) : « ولست أقول ولا أحد من أهل العلم بهذا مجتمع عليه — إلا لا لا

تلقى علماً أبداً إلا قاله لك وحكاه عن من قبله ، كالمظهر أربع ، وكشعر الخمر ، وما

أشبهه هذا . وقال في اختلاف الحديث ( ١٤٧ : ٧ ) من هاتش الأدم ) : « وكل حقيقة

على أن دعوى الإجماع في كل الأحكام ليس كما ادعى من ادعى ما وصفت من هذا

ويظن أنه أكثر منه . وجناته : أنه لم يدع الإجماع — فيما سوى جعل القرآن الذي

كان فيها العامة — : أحد من أصحاب رسول الله ، ولا التابعين ، ولا القرن الذين

من بعدهم ، ولا القرن الذين يلونهم ، ولا عالم علمته على ظهر الأرض ، ولا أحد

نسبه العامة إلى علم ، إلا حينا من الزمان ، فإن قالوا قال فيه بمعنى لم أعلم أحداً من

أهل العلم عرّفه ، وقد حفظت عن عدد منهم لإطالة .

وهذا الرأي هو الرأي الصحيح في الإجماع ، ولا إجماع غيره . وقد ذكرته في

حواشي الكتب التي حققتها . ومن أقدم ما كتبت في ذلك حاشية على الأحكام لأن

حزم ، المطبوع سنة ١٣٤٦ ( ١٤٢ : ١٤٤ ) . وانظر ما سباني برقم

( ٢٨٩ ، ٢٩٠ ) . ط وشمسكي .

التابعين - : فجمعت الإجماع ما أجمع عليه هؤلاء ؟

٢٧٠ — قال : نعم .

٢٧١ — قلتُ : زعمتَ أنهم لم يجتمعوا قطُّ في مجلسٍ علمته ، وإنما استدلتَ على إجماعهم بنقل الخبر عنهم ، وأنك لك وجبتهم يقولون في الأشياء ، ولا تجد فيها كتاباً ولا سنة - : استدلتَ على أنهم قالوا بها من جهة التماسي ، فقلتُ : التماسي العلم الثابت الذي أجمع عليه أهل العلم أنه حق ؟

٢٧٢ — قال : هكذا قلتُ .

٢٧٣ — وقلتُ له : قد يمكن أن يكونوا قالوا ما لم تجده أنت في كتابٍ ولا سنةٍ وإن لم يذكره <sup>(١)</sup> ، وما يزوّن لم يذكره ، وقالوا الرأي <sup>(٢)</sup> دون التماسي .

٢٧٤ — قال : إن هذا وإن أمكن عليهم فلا أنظر بهم أنهم علموا شيئاً فتركوا ذكره ، ولا أنهم قالوا إلا من جهة التماسي .

٢٧٥ — فقلتُ له : لأنك وجدتَ أقوالهم تدلُّ على أنهم

(١) ط و د و ب ذكره . (٢) ط و بالرأي .

٢٦٤ — فقلتُ له : إن كان ما قلتَ من هذا كما قلتَ فالذي يبدئك فيه أكثر ، لأن الإجماع في علم الخاصّة إذا لم يوجد في فرقة كان أن يرجع في الدنيا أبعد .

✱ ✱

٢٦٥ — قال : وقلتُ : قولك وقول من قال « الإجماع » خلاف الإجماع .

٢٦٦ — قال : فأوجدي ما قلتُ ؟

٢٦٧ — قلتُ : إن كان الإجماع قبّاك إجماع الصعابة أو التابعين أو القرن الذين يتلوهم وأهل زمانك - : فأنت تثبت عليهم أمراً تُسميه « إجماعاً » .

٢٦٨ — قال : ما هو ؟ أجعلُ له مثلاً أعرفه <sup>(١)</sup> ؟

٢٦٩ — قلتُ : كأنك ذهبتَ إلى أن جعلتَ ابن السبّك عالمَ أهل المدينة ، وعطاء عالمَ أهل مكة ، والحسن <sup>(٢)</sup> عالمَ أهل البصرة ، والشّعبي عالمَ أهل الكوفة ، من

(١) ط و لأعرفه .  
(٢) هو الحسن بن أبي الحسن البصري . كان عالماً زاهياً فقيهاً حجة مأموراً عابداً ناسكاً ، كثير العلم ، فسيماً جليلاً وسياً . مات سنة ١١٠ عن ٨٨ سنة .  
(٣) هو عاصم بن شراحيل - بفتح الشين وتخفيف الراء - الشامي الهمداني ، علامة التابعين ، الإمام الحافظ الفقيه الثقفي . مات سنة ١٠٩ وقد قارب التسعين .

قالوا فيما <sup>(١)</sup> لم تجِد أنت فيه خبراً ، فنهضت أنهم قائلوه قياساً ،  
وقلت : إذا وجدت أنماكم مجتمة على شيء فهو دليل على  
إجماعهم - : أتتبعوا إليك عنهم أنهم قالوا من جهة الخبر  
المنفرد <sup>(٢)</sup> ؟

٢٨٢ — فرَوَى ابنُ المِثْبَب عَنْ أَبِي هُرَيْرَةَ عَنْ  
النبي صلى الله عليه وسلم شيئاً وأخذ به <sup>(٣)</sup> ، وعن  
أبي سعيد الخُدْرِي في الصَّوْفِ شيئاً وأخذ به <sup>(٤)</sup> ، وله فيه  
مخالعون من الأمة .

٢٨٣ — وَرَوَى عَطَاءٌ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ  
صلى الله عليه وسلم في (المُخَابَرَةِ) <sup>(٥)</sup> شيئاً وأخذ به ، وله فيه  
مخالعون .

- (١) ط د ما ، يدل د نيا .  
(٢) يعني : وقد احتججت بهمهم في القول بالقياس ، وادعيت أن هذا إجماع  
منهم . فلم لم تتبعهم في [أخذ خبر الواحد] ، وهو إجماع منهم في النظر أيضاً ؟ !  
(٣) هنا في ط زيادة وله فيه مخالعون من الأمة . ورويت في الخطوط .  
(٤) ط د فأخذ به .  
(٥) د المخابرة ، هي منازعة الأرض بحزم . مما يخرج منها ، كنت أو الرابع ،  
أو خبر ، معين منه . وانظر الرسالة (رقم ١٢٢٥ ، ١٢٢٦) .

ذهبوا إلى أن القياس لازم لم ، أو إنما هذا شيء ظننه ،  
لأنه الذي يجب عليهم ؟

٢٧٦ — قلت له <sup>(١)</sup> : فإلما القياس لا يحل <sup>(٢)</sup> عندهم  
محله عنده ؟

٢٧٧ — قال : ما أرى إلا ما وصفت لك .

٢٧٨ - قلت له : هذا الذي روَيْته عنهم ، من أنهم  
قالوا من جهة القياس - : <sup>(٣)</sup> «عَوَّضُوا» ! ثم جعلت التوهم حجة !  
٢٧٩ — قال : فمن أين أخذت القياس أنت ، وسمعت  
أن لا يقال إلا به ؟

٢٨٠ — قلت : من غير الطريق التي أخذته منها . وقد  
كتبته <sup>(٣)</sup> في غير هذا الموضع <sup>(٤)</sup> .

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٢٨١ — قلت <sup>(٥)</sup> : أرايت الذين نقلوا لك عنهم أنهم

- (١) ط د وقلت له .  
(٢) ط د يحل د يحذف « لا » ، وهي ثابتة في الخطوط ، وحدثنا خلفاً .  
(٣) حرف د قد ، لم يذكر في .  
(٤) يشير إلى ما كتبه في كتاب الرسالة في القياس والاجتهاد (رقم ١٣٢١)  
— ١٤٥٥ ص ٤٧٦ — ٥٠٣ . (٥) ط د وقلت .

أَنَّ مَا وَجَدَ مِنْ رُفُودِهِمْ مُجْمَعٌ <sup>(١)</sup> نَوْمَ الْعَامَةِ الْأَخْلَدِ بِهِ ،  
وَرَوَيْتَ عَنْهُمْ شَيْئًا شَدِيدًا . وَذَلِكَ قَبُولُ كُلِّ وَاحِدٍ مِنْهُمْ الْخَيْرَ  
عَلَى الْإِثْرَةِ . وَتَوَسَّعُ فِي الْإِخْتِلَافِ . ثُمَّ عَثِرَتْ مَا أَجْمَعُوا  
عَلَيْهِ لَا شَكَّ فِيهِ <sup>(٢)</sup> ، وَخَالَفَتْ فِيهِ ، فَقُلْتُ : لَا يَنْبَغِي قَبُولُ  
الْخَيْرِ عَلَى الْإِثْرَةِ ، وَلَا يَنْبَغِي الْإِخْتِلَافُ . وَتَوَهَّتَ عَلَيْهِمْ  
أَنَّهُمْ قَائِمُونَ ، فَرَعَمْتُ أَنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يَدَّعِيَ الْقِيَاسَ ،  
وَلَا يَقُولَ إِلَّا بِمَا يَعْرِفُ .

٢٨٩ — بَنَى قَوْلَكَ « الْإِجْمَاعُ » خِلَافَ الْإِجْمَاعِ ، بِنْدًا ،  
وَبَنَىكَ رَعَمْتَ أَنَّهُ لَا يَسْكُنُونَ عَلَى شَيْءٍ عِلْمُهُ ! وَقَدْ مَاتُوا  
لَمْ يَحُلْ أَحَدٌ مِنْهُمْ قَطُّ « الْإِجْمَاعُ » عَلَيْهِمْ .

(١) ط (وَأَنَّ مَا وَجَدَ عَنْهُمْ عَلَيْهِمْ) . وَمَا أَتَيْنَاهُ فِي الْأَوَّلِ ،  
وَلَكِنْ زِدْنَا فِيهِ حَرْفَ « مِنْ » لِيُظْهَرَ أَنَّهُ سَاطِعٌ مِنَ النَّاسِخِ . وَبِذَلِكَ يَكُونُ  
الْكَلَامُ وَاجِعًا صَحِيحًا لَا حُجَّةَ إِلَى التَّصَرُّفِ فِيهِ .

(٢) وَقَالَ الشَّافِعِيُّ فِي الرَّسَالَةِ ( رَقْم ١٢٤٨ — ١٢٤٩ ) : « دَوْلُ جَزْ  
لِأَحَدٍ مِنَ النَّاسِ أَنْ يَقُولَ فِي عِلْمِ الْحَاضِرَةِ : أَجْمَعَ الْمَلِكَيْنِ قَدِيمًا وَحَدِيثًا عَلَى تَشْيِيتِ  
خَيْرِ الْوَاحِدِ وَالْآخَرِ . وَإِنَّمَا بَنَى ، أَنَّهُ لَمْ يَعْلَمْ مِنْ قَبْلِهِ الْمَلِكَيْنِ أَحَدٌ إِلَّا وَقَدْ تَبَيَّنَ —  
جَزْ لِي . وَكَانَ أَقُولُ : لَمْ أَحْفَظْ عَنْ قَبْلِهِ الْمَلِكَيْنِ أَنَّهُمْ اخْتَلَفُوا فِي تَشْيِيتِ خَيْرِ  
الْوَاحِدِ ، بِنَا وَصَفْتُ مِنْ أَنَّ ذَلِكَ مُوجِبٌ عَلَى كَلَامِهِ » .

٢٨٥ — وَرَوَى شُعْبَةُ عَنْ شُعْبَةَ <sup>(١)</sup> عَنْ عَبْدِ اللَّهِ <sup>(٢)</sup>  
عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أُخِذَ بِهَا ، وَلَهُ فِيهِ تَحْقُونُ  
مِنَ النَّاسِ الْيَوْمَ وَقَبْلَ الْيَوْمِ .

٢٨٥ — وَرَوَى أَحْمَدُ <sup>(٣)</sup> عَنْ زَيْدِ بْنِ جُرَيْجٍ <sup>(٤)</sup> عَنِ النَّبِيِّ صَلَّى اللَّهُ  
عَلَيْهِ وَسَلَّمَ أُخِذَ بِهَا . وَلَهُ فِيهِ تَحْقُونُ مِنَ النَّاسِ يَوْمَ  
وَقَبْلَ الْيَوْمِ <sup>(٥)</sup> .

٢٨٦ — وَرَوَى لَكَ عَنْهُمْ أَنَّهُمْ عَشَرًا يَقُولُونَ بِقُرْبَانِ  
يُخَالَفُ كُلَّ وَاحِدٍ مِنْهُمْ فِيهَا قَضَاءٌ صَحِيحُهُ <sup>(٦)</sup> . وَكَانُوا عَلَى ذَلِكَ  
حَتَّى مَاتُوا ؟

٢٨٧ — قُلْ : نَعَمْ ، قَدْ رَوَى هَذَا عَنْهُمْ .

٢٨٨ — فَقُلْتُ لَهُ : فَبُيِّنْ لِي جَمَاعَتَهُمُ <sup>(٧)</sup> فِي الدِّينِ ، وَرَعَمْتَ

(١) هُوَ عَفَّةُ بْنُ قَبِيصٍ الشَّافِعِيُّ الْكَلْبِيُّ ، مِنْ كِبَرِ التَّائِمِينَ ، وَلَدَ فِي حَيَاةِ  
رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ . مَاتَ بِالْكُوَيْتِ سَنَةَ ٦٣

(٢) هُوَ عَبْدِ اللَّهِ بْنُ مَسْعُودٍ ، الصَّحَابِيُّ الْكَلْبِيُّ .

(٣) هُوَ الْحُسَيْنُ الْبَصْرِيُّ .

(٤) ط (وَعَنْ رَجُلٍ) . وَمَا هَذَا أَحْسَنُ ، لِأَنَّهُ يَرِيدُ الْمُرَادَ مِنَ الْجَنَسِ ،

وَلَا يَرِيدُ التَّكْبِيرَ .

(٥) انْظُرِ الرَّسَالَةَ ( رَقْم ١٢٣٥ — ١٢٤٩ ) .

(٦) كَلِمَةٌ وَفَسَّاهُ ، لَمْ تَدْكُرْ فِي طَوْحِي نَهْيَةً فِي الْمَحْذُورِ .

(٧)

إجماع الاختلاف من كل وجهه، في بلد أو أكثر من يحكى لنا عنه من أهل البدائي ؟ !

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٢٩٥ — قال : وقلت لبعض من حضر هذا الكلام منهم :

نصيرُ بك إلى المسألة عمّا نرى لنا ولك من هذا ؟

٢٩٦ — قال : وما هو ؟

٢٩٧ — قلت : أفرأيت سنة رسول الله صلى الله عليه وسلم ،

بأي شيء تثبت ؟

٢٩٨ — قال : أقول القول الأول الذي قاله لك صاحبنا .

٢٩٩ — فقلت : ما هو ؟

٣٠٠ — قال : زعم أنها تثبت من أحد ثلاثة وجوه .

٣٠١ — قلت : فاذا ذكر الأولى <sup>(١)</sup> منها ؟

٣٠٢ — قال : خبر العامة عن العامة .

٣٠٣ — قلت : أكتفواكم الأول ، مثل أن الخبر أربع ؟

٣٠٤ — قال : نعم .

(١) ط د الأول . . ولكن الشافعي كثيراً ما يفتن في التذكير والتأنيث .

إذا كان مقرباً .

٢٩٠ — والإجماع أكثر العلم لو كان حيث ادّعيته !

أو ما كذاكَ عيبُ الإجماع أن لم يرووا <sup>(١)</sup> عن أحدٍ بعد

رسول الله صلى الله عليه وسلم دعوى الإجماع ، إلا فيما لا يختلف

فيه أحدٌ ، إلا عن أهل زمانك هذا <sup>(٢)</sup> ؟ !

٢٩١ — فقال : فقد ادّعاء بعضهم ؟

٢٩٢ — قلت : أفصّدت ما ادّعى منه ؟

٢٩٣ — قال : لا .

٢٩٤ — قلت : فكيف صرت إلى أن تدخل فيما ذهبت

في أكثر مما عبت ؟ ! ألا تستدلّ من طريقك أن الإجماع

هو ترك ادّعاء الإجماع ؟ ! ولا تحسّن النظر لنفسك إذا قلت

« هذا إجماع » فوجدت حوّلك من أهل العلم <sup>(٣)</sup> من يقول

لك : معاذ الله أن يكون هذا إجماعاً ، بل فيما ادّعيت أنه

(١) ط وأنه لم يرو .

(٢) انظر ما مضى ( برقم ٢٥٧ — ٢٦٠ ) . وما قلنا هناك في الحاشية

عن كتب اختلاف الحديث .

(٣) ط د ما ذهبت . وما في الأصل صحيح ، لأن قوله « في أكثر ما

عبت » يدل اشتغال من قوله « فيما ذهبت » .

(٤) ط د فيوجد سؤالك من أهل العلم .



تنفق (١) عن رسول الله صلى الله عليه وسلم انقطاع لا يمكن فيها .

٣٠٩ — قال : وقلت له (٢) : لا يكون تواتر الأخبار عندك

عن أربعة في بلد ، ولا إن قيل (٣) عنهم أهل بلد ، حتى يكون المدني يزوي عن المدني ، والمكي يزوي عن المكي ، والبصري [ يزوي عن البصري ] (٤) ، والكوفي يزوي عن الكوفي (٥) ، حتى ينتهي كل واحد منهم بحديثه إلى رجل من أصحاب النبي صلى الله عليه وسلم غير الذي روى عنه صاحبه ، ويجمعوا جميعاً على الرواية عن النبي صلى الله عليه وسلم ، للمائة التي وصفت ؟

٣١٠ — قال : نعم . لأنهم إذا كانوا في بلد واحد أمكن

فيهم التواطؤ على الخبر ، ولا يمكن فيهم إذا كانوا في بلدان مختلفة !

٣١١ — فقلت له : كيف ما ثبتت (٦) به على من جعلته إماماً في دينك ، إذا ابتدأت وتعمقت !

(١) ط و يبدان تنفق . والكثيرون في الخطوط و لكننا لأننا تنفق ، !

والذي أتبنا أقرب إليه في الرسم مما في ط .

(٢) ط و فقلت له . . . ط و ولا قبل ، وهو خطأ .

(٣) الزيادة زودناها تماماً لما سببه السابق .

(٤) ط و والبصري عن البصري ، والكوفي عن الكوفي .

(٥) أصل و الثبوت و كانينش ، وهو المظهر باليد . فكأنه يخرج خيفة ما في خبره من احتمال الكذب .

٣٠٥ — فقلت : هذا مما لا يخالفك فيه أحد علمته .

فما الوجه الثاني ؟

٣٠٦ — قال : تواتر الأخبار .

٣٠٧ — فقلت له : أحده لي تواتر الأخبار بأقل مما ثبت

الخبر ، واجعل له مثلاً ، لنعم ما يقول وتقول ؟

٣٠٨ — قال : نعم . إذا وجدت هؤلاء التفرع ، للأربعة

الذين جعلتهم مثلاً (١) ، يزوون فتتفق روايتهم أن رسول الله

صلى الله عليه وسلم حرم شيئاً أو أحل (٢) — : استدلت على

أنهم يتباينون ببلدائهم ، وأن (٣) كل واحد منهم قبل العلم عن

غير الذي قبله عنه صاحبه ، وقبله عنه من أذاه إنياء ، ممن

لم يثبت عن صاحبه (٤) — : أن (٥) روايتهم إذا كانت هكذا

(١) يعني سعيد بن السيب وعطاء والحسن والتهامي ، الذين جعلهم مثلاً فيما

مضى ( برقم ٢٦٩ ) .

(٢) ط زيادة و شيئاً . ولا ضرورة لزيادتها .

(٣) ط و أن و بخلاف الروايات ، وهو خطأ ، لأن هذا عطف على ما قبله .

(٤) من أول قوله و قبله عنه ، إلى هنا سقط من ط خطأ ، وهو ثابت

في الأصل .

(٥) ط و إذ و بل و أن ، وهو خطأ ، لأن هذا اللتبدل عليه المتبسط .

(١) جابر . واجعل الزهري<sup>(٢)</sup> يروي لك أنه سمع ابن المسيب يقول: سمعت عمر<sup>(٣)</sup> ، أو أبا سعيد الخدري يقول: سمعت النبي صلى الله عليه وسلم ( واجعل أبا إسحق الشيباني<sup>(٤)</sup> يقول: سمعت الشعمي<sup>(٥)</sup> ، أو سمعت إبراهيم التيمي<sup>(٦)</sup> ) ، يقول أحدهما: سمعت البراء بن عازب<sup>(٧)</sup> ، أو سمعت رجلاً من أصحاب النبي صلى الله عليه وسلم يُسميه ( واجعل أيوب<sup>(٨)</sup> يروي عن الحسن البصري<sup>(٩)</sup> يقول: سمعت أبا هريرة أو رجلاً غيره من أصحاب النبي صلى الله عليه وسلم يقول: سمعت النبي صلى الله عليه وسلم ) بتحليل الشيء أو تحريم له<sup>(١٠)</sup> - : أقوم بهذا حجة ؟

(١) يعني: مع فضل أبي سلمة وفضل جابر . وحرف د في « يأتي كثيراً » مع « و » ، وانظر لسان العرب ، والنبي لابن هشام ، ومع العوام<sup>(١١)</sup> ( ٢ : ٣٠ ) .  
(٢) هو ابن شهاب ، واسمه دحيد بن مسلم بن عبيد الله بن عبد الله بن شهاب الزهري القرشي ، أحد الأئمة الأعلام ، وعالم الميزان والشأن . مات في رمضان سنة ٢٤ ( ٢٤ عن ٧٢ سنة .

(٣) اسمه سليمان بن أبي سليمان ، كوفي من الأئمة الثقات ، من كبار أصحاب الشعمي مات سنة ١٤١ أو ١٤٢

(٤) هو إبراهيم بن يزيد بن شريك التيمي الكوفي ، من ثقات التابعين وعبادهم مات في حبس المطاج سنة ٩٢ أو ٩٤ ولم يبلغ ٤٠ سنة .

(٥) هو أيوب بن أبي تيمية السخاني البصري ، من الحفاظ الأثبات ، حجة أعا البصرة . مات سنة ١٣١ عن ٦٨ سنة .  
(٦) ط د بتحليل الشيء أو تحريمه .

٣١٢ - قال : فاذكرو ما يدعوا علي فيه ؟

٣١٣ - فقلت له : أرايت لو لقيت رجلاً من أهل بدر ، وهم المذمومون ، من<sup>(١)</sup> أثني الله تعالى عليهم في كتابه - : فأخبرك خبراً عن رسول الله صلى الله عليه وسلم لم تُلْفه<sup>(٢)</sup> حجة ؟ ولا يكون عليك خبره حجة كما وصفت ؟ ! أليس من بعدهم أولى أن لا يكون خبر الواحد منهم مقبولا ، لنقصهم عنهم في كل فضل ، وأنه يمكن فيهم ما أمكن فيمن هو خير منهم ، وأكثر منه ؟ !

٣١٤ - قال : بلى .

٣١٥ - فقلت : أفتحكم فيما ثبت<sup>(٣)</sup> من صحة الرواية ؟ فاجعل<sup>(٤)</sup> أبا سلمة<sup>(٥)</sup> بالمدنية يروي لك أنه سمع جابر بن عبد الله يروي عن النبي صلى الله عليه وسلم ، في فضل أبي سلمة وفضل

(١) ط د ومن . . . والكلام بدون الواو أبلغ ، لأنه يكون خبراً ثانياً .

(٢) ط د لم تُلْفه .

(٣) يريد الشافعي أن يجاله عن قوله في أساسه صحة ثابتة : هل يحكم بعصمتها ؟ وفي ط د أفتحكم فيما ثبتت وهو خطأ محال . انظر فصل .

(٤) هو أبو سلمة بن عبد الرحمن بن عوف ، من ثقات التابعين وفقهائهم ، إمام من سادات قریش . مات سنة ٩٤ عن ٧٢ سنة .



٣٢١ — قلتُ : لا يُدفعُ (١) هذا إلا بالرجوع عنه ، أو

ترك الجواب للرواعين ، والرواعان أقيح ! !

☆  
☆

٣٢٢ — قال : فإن قلتُ (٢) : لا أقبلُ عن واحدٍ (٣)

ثبت عليه خبراً إلا من أربعة وجوه متفرقة ، كما أقبلُ عن النبي صلى الله عليه وسلم إلا عن أربعة وجوه متفرقة ؟

٣٢٣ — قال : قلتُ له : فهذا يزلُمُك ، أفنتول به ؟

٣٢٤ — قال : إذا تقولُ به (٤) لا يوجدُ هذا أبداً .

٣٢٥ — قلتُ : أجل . وتعلمُ أنتُ أنه لا يوجدُ أربعة

عن الزهري ، ولا ثلاثة الزهري رابهم عن الرجل من أصحاب النبي صلى الله عليه وسلم .

٣٢٦ — قال : أجل . ولكن دَعُ هذا .

(١) ط د لا تدفع .

(٢) كلمة د قال ، لم تذكر في ط . وكلمة د فان ، لم تذكر في الخطوط .

وبإتباعها ضروري لتصحیح الكلام .

(٣) ط د من واحد . وما في الأصل أجود وأصح .

(٤) د إذا تدخل على المعارع قليلاً . وشاهده \* وإذا تردُّ إلى قليل نقتع (٦)

٣١٦ — قال : نعم .

٣١٧ — قلتُ له : أيُمكنُ في (الزهري) عندنا أن يعطى على

ابنِ السَّيِّ ، وابنِ السَّيِّ على مَنْ فوقه ؟ وفي أيوب أن يعطى على الحسن ، والحسن على مَنْ فوقه ؟

٣١٨ — فقال : فإن قلتُ : نعم ؟

٣١٩ — قلتُ : يزلُمُك أن ثبتَ لخير الواحد على ما يُمكنُ

فيه العاطفُ من لقيت ، ومن هو دون مَنْ فوقه ، ومن فوقه دون أصحاب النبي صلى الله عليه وسلم ، وتردَّ خبر الواحد

من أصحاب النبي صلى الله عليه وسلم ، وأصحاب النبي صلى الله عليه وسلم لخير مَنْ بعدهم . فتردَّ الخبرُ بأن يُمكنُ فيه العطفُ

عن أصحاب رسول الله صلى الله عليه وسلم ، وهم خيرُ الناس ، وتقبله عن مَنْ لا يعِدُّهم في الفضل ! لأنَّ كلَّ واحدٍ من هؤلاء ثبتَّ عن مَنْ فوقه ، ومن فوقه ثبتَّ عن مَنْ فوقه ،

حتى ينتهي الخبرُ إلى رسول الله صلى الله عليه وسلم . فذه

الطريق التي عبت ! !

٣٢٠ — قال : هذا هكذا إن قلته . ولكن أريت

إن لم أعطك هذا هكذا ؟

٣٣٤ — قال : إذا رَوَى عن رسول الله صلى عليه وسلم

الواحد من أصحابه الضحك حكّم به فلم يُخالِفه غيره — : استدللنا على أمرين : أحدها أنه إنما حدّث به في جماعتهم . والثاني : أن تركهم الرّد عليه بخبر يُخالِفه إنما كان عن معرفة منهم بأن ما كان كما يُخبرهم ، فكان خبراً عن علمتهم .

٣٣٥ — قلتُ له : قاع ما رأيكم تنتقلون إلى شيء إلا احتججتم بأضعف مما تركتم !

٣٣٦ — فقال : أبين لنا ما قلت ؟

٣٣٧ — قلتُ له : أيمكن لرجلٍ من أصحاب النبي صلى الله عليه وسلم يُحدّث بالدينه — رجلاً أو ثوراً قليلاً — ما تُثبتُه (١) عن رسول الله صلى الله عليه وسلم ، ويمكن أن يكون أنى بلدًا من البلدان غُدّث به واحداً أو ثوراً ، أو حدّث به في سفرٍ ، أو عند موته ، واحداً أو أكثر ؟

٣٣٨ — قال : فإن قلتُ : لا يمكن أن يحدّث واحداً

بالحديث إلا وهو مشهور عندهم ؟

(١) وما ، موصولة ، مقبول و يحدّث .

٣٣٧ — قال : وقلتُ له : من قال أقبل (١) من أربعة دون ثلاثة ؟ أرايت إن قال لك رجلٌ : لا أقبل إلا من خمسة ؟ أو قال آخرٌ : من سبعة ! ما حجّجك عليه ؟ ومن وُقّت لك الأربعة ؟ !

٣٣٨ — قال : إنما مثّلتهم .

٣٣٩ — قلتُ : أفتُحدّث (٢) من يُقبل (٣) منه ؟

٣٤٠ — قال : لا .

٣٤١ — قلتُ : أو تعرّفه فلا تُظهره ، لما يدخل عليك ؟ !

٣٤٢ — فتبيّن انكساره (٤) .

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٣٤٣ — وقلتُ له : أو لبعض من حضر معه : فما الوجه الثالث / الذي يُثبت (٥) عن النبي صلى الله عليه وسلم ؟

(١) في النسختين « أقبل » وهو خطأ واضح .

(٢) في النسختين « أفتُحدّث » وهو خطأ .

(٣) ط و قبل .

(٤) ط « اكره » وهو خطأ . لأن الراد : تبين انكساره وانقطاعه في المناظره .

(٥) ط « ثبت به » .

صلى الله عليه وسلم ابن عباس وغيره<sup>(١)</sup> ، ولم يحفظ عن أحد من أصحاب رسول الله صلى الله عليه وسلم - خلافا - خلافا ، فقلوبك أن تقول بها ، على أصل مذاهب<sup>(٢)</sup> ، وتجمعا إجماعا .

٣٤٤ — فقال بعضهم : ليس ما قال من هذا مذهبا !

٣٤٥ — قلت : ما زلت أرى ذلك فيه وفي غيره مما كلفتمونا به . والله السمعان .

٣٤٦ — قال : فاليقين مع الشاهد إجماع بالمدينة ؟

٣٤٧ — قلت : لا ، هي مختلف فيها ، غير أنا نعلم بما اختلف فيه إذا ثبت عن رسول الله صلى الله عليه وسلم من الطريق الذي ثبتت منها .

٣٤٨ — قال : وقت له : من الذين إذا انتفت أفتاؤهم

(١) اليقين مع الشاهد : أن يحكم الحاكم المدعي بشاهد واحد وعينه هو على دعواه . وحديث ابن عباس في ذلك رواه الشافعي في الأم ( ٢ : ٢٧٣ ) وعن ابن عباس : أن رسول الله صلى الله عليه وسلم قضى بالبين مع الشاهد . فأن عمرو : في الأموال . ورواه أيضا أحمد ومسلم وأبو داود وابن ماجه وغيرهم من حديث ابن عباس . وورد أيضا من حديث جابر ، وصارفة بن حزم ، وسعد بن عباد ، وعلي بن أبي طالب ، وأبي هريرة ، وغيرهم . وانظر بيل الأوائل . للشركانى ( ٩ : ١٩٠ — ١٩٥ ) والشافعي في الأم مناظرات وحجاج في إثباته . ط و مذهبك . ( ٢ )

٣٣٩ — قلت : فقد تجد العبد من تابعين يزورون الحديث فلا يسمون إلا واحدا . ولو كن مشهور عندهم بهم سمعوا من غيره ، وسمعوا من سبعة منه<sup>(١)</sup> .

٣٤٠ — وقد تجدهم يختلفون في الشيء قد روي فيه الحديث عن النبي صلى الله عليه وسلم ، فيقول بعضهم قولا يوافق الحديث ، وغيره قولا يخالفه .

٣٤١ — قال : فمن أين ثرى ذلك ؟

٣٤٢ — قلت : لو سمع الذي قال بخلاف الحديث الحديث الحديث عن النبي صلى الله عليه وسلم ما قال - إن شاء الله تعالى - بخلافه<sup>(٢)</sup> .

٣٤٣ — وقت له : قد روى [اليقين مع الشاهد] عن النبي

(١) ط و بأنهم سمعوا من غيره سمعوا من سمعوا منه . وهو خطأ . بل البراء : أنهم قد يسمعون الحديث من أكثر من واحد ، ويسمون زائوا واحدا عند الرواية ، مع أنهم سمعوه منه ومن غيره .

(٢) قال الشافعي في الرسالة ( رقه ٥٩٨ — ٥٩٩ ) : هو ما أن تخالف حديثا عن رسول الله تأييدا عنه - فأرجو أن لا يؤخذ ذلك علينا ، إن شاء الله . وليس ذلك لأحد ، ولكن قد يعمل الرجل السنة ، فيكون له قول بخلافها ، لا أنه عمد خلافا . وقد يفعل المرء ويخطئ في التأويل .

يَعْلَمُ إِجْمَاعُهُمْ فِي الْبَالِدَانِ . وَلَا يُقْبَلُ عَلَى أَقْرَبِيٍّ مِنْ تَأْتِ  
دَارُهُ مِنْهُمْ وَلَا قَرِيبٌ — : الْإِخْبَارُ<sup>(١)</sup> الْجَمَاعَةُ عَنِ الْجَمَاعَةِ .

٣٥٧ — قَالَ : فَإِنْ قُلْتُمْ ؟

٣٥٨ — قُلْتُ : فَقُلْتُ إِنَّ شَيْئًا !

٣٥٩ — قَالَ : قَدْ يَجْمَعُ هَذَا جَدًّا .

٣٦٠ — قُلْتُ لَهُ : وَهُوَ مَعَ ضَيْقِهِ غَيْرُ مُوجُودٍ .

٣٦١ — وَيَدْخُلُ عَلَيْكَ خِلَافُهُ فِي الْقِيَاسِ ، إِذَا زَعَمْتَ  
لِلْوَاحِدِ أَنْ يَقِيَسَ ، فَقَدْ أُجْزِيَ الْقِيَاسُ ، وَالْقِيَاسُ قَدْ يَكُونُ فِيهِ  
الْخَطَأُ . وَامْتَنَعْتَ مِنْ قَبُولِ السُّنَّةِ ، إِذَا كَانَ يَكُونُ فِيهِمْ رِوَاها  
الْخَطَأُ . فَأُجْزِيَ الْأَضْعَفُ وَرَدَّدْتَ الْأَقْوَى ! !

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٣٦٢ — وَقُلْتُ لِبَعْضِهِمْ : أَرَأَيْتَ قَوْلَكَ « إِجْمَاعُهُمْ يَكْدُلُ »

لَوْ قَالُوا لَكَ : نَحْنُ قُلْنَا بِهِ مَجْتَمِعِينَ وَمُعْتَرِقِينَ<sup>(٢)</sup> مَا قَبَلْنَا الْخَبَرَ  
فِيهِ ، وَالَّذِي<sup>(٣)</sup> ثَبَتَ مِثْلَهُ عِنْدَنَا عَنْ مَنْ قَبَلْنَا . وَنَحْنُ مَجْتَمِعُونَ

(١) ط د لا خبر ه . . . ط د ومترقنين ه .

(٢) ط د الذي ، بدون الواو ، وهي تاربة في المخطوطة . وحدثنا خطأ ،

لأنه يريد أن من ثبتي قولوا به ما قبلوا فيه الخبر ، ومنه ما ثبت مثله عندهم عن  
من قبلهم .

فِي الْخَبَرِ صَحِّحٌ ، وَإِذَا اختلفوا طرحت لاختلافهم الحديث ؟

٣٤٩ — قَالَ : أَحَبُّ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ .

٣٥٠ — خَيْرُ الْخَاصَةِ<sup>(١)</sup> ؟

٣٥١ — قَالَ : لَا .

٣٥٢ — قُلْتُ : فَهَلْ يَسْتَدْرِكُ عَنْهُمْ الْعَامُ ، بِإِجْمَاعِ  
أَوْ اخْتِلَافِ — : بِخَيْرٍ عَامَةٍ ؟

٣٥٣ — قَالَ : مَا لَمْ أَسْتَدْرِكْهُ بِخَيْرِ الْعَامَةِ<sup>(٢)</sup> نَظَرْتُ إِلَى

إِجْمَاعِ أَهْلِ الْعِلْمِ الْيَوْمَ : فَإِذَا وَجَدْتُهُمْ مَا أَجْمَعُوا عَلَيْهِ اسْتَدَلَّتْ عَلَى  
أَنَّ اخْتِلَافَهُمْ عَنِ اخْتِلَافِ مَنْ مَعَى قَبْلَهُمْ .

٣٥٤ — قُلْتُ لَهُ : أَرَأَيْتَ اسْتِدْلَالَ بَأَنَّ إِجْمَاعَهُمْ خَيْرٌ

جَمَاعَتِهِمْ ؟

٣٥٥ — قَالَ : فَتَقُولُ مَاذَا ؟

٣٥٦ — قُلْتُ : فَأَقُولُ<sup>(٣)</sup> : لَا يَكُونُ لِأَحَدٍ أَنْ يَقُولَ حَتَّى

(١) هذا استنباط إنكاري من الشافعي . لم يسبق بقوله « قُلْتُ » . يعني :

قُلْتُ : هَلْ هُوَ خَيْرُ الْخَاصَةِ ؟ وَالشافعي كثيراً ما يهتج ذلك : يَحْدَفُ « قَالَ »  
و « قُلْتُ » . وفيه المراد من سياق الكلام .

(٢) فِي النَّسَخَاتِ وَبِخِلَافِ الْعَامَةِ ه ، وَهُوَ خَطَأٌ ظَاهِرٌ .  
(٣) ط د أقول ه .

٣٦٧- قال : لا أعني هذا . وهذا غير موجود . ولكن إذا حدث واحد منهم الحديث عن النبي صلى الله عليه وسلم ، ولم يعارضه منهم معارض بخلافه ، فذلك دلالة على رضاهم به ، وأنهم علموا أن ما قال منه ، كما قال .

٣٦٨- قلت : أو ليس قد يحدث ولا يسمونه ، ويحدث ولا علم لمن سمع حديثه منهم أن ما قال كما قال ، وأنه خلاف ما قال (١) ؟ وإنما على الحديث أن يسمع ، فأنما لم يعلم خلافه فليس له رده ؟

٣٦٩- قال : قد يمكن هذا على ما قلت . ولكن الائمة من أصحاب رسول الله صلى الله عليه وسلم ، فلا يمكن أبداً أن يحدث محدثهم بأمر فيدعوا ممارضته إلا عن علم بأنه كما قال .

٣٧٠- وقال : فتقول (٢) : فإذا حكى حاكمهم فلم يتركوه (٣) فهو علم منهم بأن ما قال الحق ، وكان عليهم أن يقيموا على ما حكم فيه .

(١) يعني : أو أنه خلاف ما قال . فأنى بالراوي في موضعه و أو ه .  
(٢) كلمة ه فتأول ه لم تذكر في ط .  
(٣) ه الناكرة ه أصدا : الجارية والمعاداة . والراد بها هنا الخاتمة والناكر ما قال والراد عليه .

على أن جبراً لنا في ليس فيه نصراً ولا سنة أن تقول فيه بقياس . وبأن الخائفة . أتبين أن خبر الذين زعمت أن أخبارهم وقد اجتمعت عليه فعدت حجة - : في شيء وبقيته في غيره ؟ !

٣٦٣- أرايت لو قال لك قائل : أتبينهم (١) في تثبيت أخبار الصادقين ، وإن كنت منفردة ، وأقبل عنهم القول بالقياس في لا خير فيه ، فترى أن يختلفوا ، فأكون قد تبهم في كل حال - : أكن أقوى حجة ، وأولى باتباعهم وأحسن ثناء عليهم ، أم أنت ؟ !

٣٦٤- قال : بهذا تقول ؟

٣٦٥- قلت : نعم .

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٣٦٦- وقلت : أرايت (٢) قولك « إجماع أصحاب رسول الله صلى الله عليه وسلم » ما معناه ؟ أعني أن يقولوا أو أكثرهم قولاً واحداً ، أو يفعلوا فعلاً واحداً ؟

(١) ط ه أنا أتبينهم ه . وكذا ه أنا ه ليست في المخطوط .  
(٢) ط ه أرايت ه .

✱ ✱ ✱

٣٧٧ — قلتُ لبعضهم : هل علمتُ أنَّ أبا بكرٍ في إمارته قَسَمَ مَالًا فَسَمَوِيٌّ فِيهِ بَيْنَ الْحَرِّ وَالْعَبْدِ <sup>(١)</sup> ؟ وجعل الجَدَّ أَبَا <sup>(٢)</sup> ؟

٣٧٨ — قال : نعم .

٣٧٩ — قلتُ : فَيَقِيلُوا مِنْهُ الْقَسَمَ ، وَلَمْ يُعَارِضُوهُ فِي الْجَدِّ حَيَاتِهِ <sup>(٣)</sup> ؟

٣٨٠ — قال : نعم . وَلَوْ قُلْتُ عَارِضُوهُ فِي حَيَاتِهِ ؟

٣٨١ — قلتُ : فَقَدْ أَرَادَ أَنْ يَحْكُمَ وَلَهُ مَخَافَتُهُ ؟ !

٣٨٢ — قال : نعم . وَلَا أَقُولُهُ !

٣٨٣ — قال <sup>(٤)</sup> : فجاء عمرُ ففعل <sup>(٥)</sup> النَّاسَ فِي الْقَسَمِ ، عَلَى النَّسَبِ وَالسَّابِقَةِ <sup>(٦)</sup> ، وَصَرَّحَ الْعَبِيدَ مِنَ الْقَسَمِ ، وَشَرَّكَ بَيْنَ الْجَدِّ وَالْأَخِيَّةِ ؟

(١) يعني قسم مال الغني . فسوى فيه بين المسلمين .

(٢) يعني : جعل الجَدَّ في الميراث منزلة الأب ، وذلك إذا كان الأب ميتاً قبل ابنه . فعُتِبَ الجَدُّ بمنزلة الأب : يشترط أن يكون له ابن ، وفيه لأخوة البيت . وانظر نيل الأوطار ( ١ : ١٧٧ — ١٧٨ ) .

(٣) ط « في حياته » . وحرف : في : ليس في الأصل .

(٤) قال ه : يعني الثَّقَفِيَّ قَسَمَ . وكثيراً ما يستعمل هذا في حكاية حوارهم .

(٥) 1 انفصل ه : فسند القدماء . وفي ح : لم ينفصل . وما في الأصل تصحيح جديد .

(٦) فجعل لأخوات النبي صلى الله عليه وسلم قسماً . ونفس الم حريف على الأنصار . ونفس أخس يصر على غيرهم . وهكذا . حتى لأخوات أبي عبيد ( ٢ : ٢٢٣ ) وما بعده .

٣٧١ — قلتُ : أَفَيُمْكِنُ أَنْ يَكُونُوا صِدْقَهُ يَصْدُقُهُ فِي الظَّاهِرِ ، كَمَا قِيلُوا شَهَادَةُ الشَّاهِدِينَ بِصِدْقِهِمَا فِي الْغَائِبِ ؟

٣٧٢ — قال : فَإِنْ قُلْتُ : لَا ؟

٣٧٣ — فقلتُ : إِذَا قُلْتُ « لَا » فَيَا عَلَيْهِمُ <sup>(١)</sup> الدَّلَالَةُ فِيهِ

بِأَنَّهُمْ قَبِلُوا خَيْرَ الْوَاحِدِ وَاتَّبَعُوا إِلَيْهِ — : علمتُ أَنَّكَ جاهل بما قلنا . وَإِذَا قُلْتَ فَيَا يُمْكِنُ مِثْلُهُ « لَا يُمْكِنُ » كُنْتَ جاهلاً

بما يجبُ عليك !

٣٧٤ — قال : ففتولُ ماذا ؟

٣٧٥ — قلتُ : أقولُ : إِنْ صَدَّقْتُمْ عَنِ الْمَارِضَةِ قَدْ يَكُونُ

عَنْ عَلِيٍّ مَا قَالَ ، وَقَدْ يَكُونُ عَنْ غَيْرِ عَلِيٍّ بِهِ ، وَيَكُونُ قَبُولاً

لَهُ ، وَيَكُونُ عَنْ وَقُوفٍ عَنْهُ . وَيَكُونُ أَكْثَرُهُمْ لَمْ يَسْمَعْهُ ،

لَا كَمَا قُلْتُمْ . وَاسْتِدْلَالُ عَنْهُمْ <sup>(٢)</sup> فَيَا سَمِعُوا قَوْلَهُ مِمَّنْ كُنَّ عَدَمُ

صَادِقًا قَبِيحًا .

٣٧٦ — قال : فَدَعْ هَذَا .

(١) ث : وَتُمْكِنُ ه بدل ه عليهم ه وهو مخالف للأصل .

(٢) أي : وهو استدلال عنهم . وفي ط « وَاسْتِدْلَالُ ه » بالنسب ، عطفاً على خبر ويكون ه . والاستئناف هنا أجود وأبلغ .



٣٩٣ — قلتُ : أجال .

٣٩٤ — قل : فإن قلتُ : لا أعرفُ هذا عنده . ولا أقبله .

حتى أجدَ العامةَ تتقلده عن العامة ، فتقولُ عنده حدَّثنا جماعةٌ من معنى قلبهم بكذا ؟

٣٩٥ — قلتُ له : ما تدَّأُ أحدًا شك في هذا ! ولا روى عن أحدٍ خلافه ! قلنَّ لم يُخبر أن يكون مثلُ هذا ثابتًا فدا حجبتك على أحدٍ إن عارضك في جميع ما زعمت أنه إجماع ، بأن يقولَ مثل ما قلتُ ؟ !

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٣٩٦ — فقال (جماعةٌ) من حضر منهم : فإن الله عز وجل دَمَّ على الاختلافِ فذمَّناه ؟

٣٩٧ — قلتُ له : في الاختلافِ حُكبان أم حُكَم ؟

٣٩٨ — قال : حكم .

٣٩٩ — قلتُ : فأسألك ؟

٤٠٠ — قال : فسل ؟

٤٠١ — قلتُ : أتوسعُ من الاختلافِ شيئاً ؟

٣٨٤ — قل : نعم .

٣٨٥ — قلتُ : ورويَ عليُّ فسوفُ بينَ نسبي في التَّحَمُّ ؟

٣٨٦ — قل : نعم .

٣٨٧ — قلتُ : فهذا على أخبارِ العامة عن ثلاثيتهم عندك ؟

٣٨٨ — قل : نعم .

٣٨٩ — قلتُ : قلنا فيما ما أُجيبَتْ ؟

٣٩٠ — قل : فتقولُ فيما أنت ما إذا ؟

٣٩١ — قلتُ : أقرأُ : إنَّ ما ليس فيه نصٌّ كتابٌ ولا سنةٌ إذا طَلَبَ بالاجتهادِ فيه المجتهدون وَسِعَ كَلَامُ - إن شاء الله تعالى - أن يفعلَ ويقولَ بما رآه حقًّا . لا على ما قلتُ . قلنا أنت ما شئتَ ؟

٣٩٢ — قل : أين قلتُ : العملُ الأوَّلُ كَيْلَ مِمِّمْ - : فإنه

يُذْهِبُ (١) للعملِ الثاني والثالثِ أن يكونَ مثله لا يُخالَفُه . ولئن

قلتُ : بل لم يكونوا واقفوا بأبكرٍ على فعله في حياته - :

ليدخلَ عليَّ أنَّهُ أنَّ يَصْغِي له اجتهادُ ، وإنَّ خالفهم .

(١) في الأصل دَأَمَ يَذْهِبُ وهو خطأ ، فصححه إلى دَفَاهَهُ . وفي ط « كن يذْهِبُ » .

٤١٤ — قلتُ : فيقولون : إلى أيِّ شيءٍ نصيرُ ؟

٤١٥ — قال : إلى القياسِ .

٤١٦ — قلتُ : قالوا : قد فعلنا ! فرأيتُ (١) القياسَ بما قلتُ

ورأى (٢) هذا القياسَ بما قال !

٤١٧ — قال : فلا يقولون حتى يجتمعوا .

٤١٨ — قلتُ : من أقطارِ الأرضِ ؟

٤١٩ — قال : فإن قلتُ : نعم ؟

٤٢٠ — قلتُ : فلا يمكنُ أن يجتمعوا ، ولو أمكنَ اختلفوا .

٤٢١ — قال : فلو اجتمعوا لم يختلفوا !

٤٢٢ — قلتُ : قد اجتمع الثنائانِ فاختلعا (٣) ، فكيف إذا

اجتمع الأكثرُ ؟ !

٤٢٣ — قال : ينبغي بعضهم بعضاً !

(١) في النسختين هـ أنزلت هـ وهو خطأ ، فإن الاستفهام هنا لا معنى له . بل المراد : أن المختلفين فاسدوا ، فزأى كل واحد منهم أن القياس يفتح ما ذهب إليه

من رأيه . فالشافعي يحكي عن هذا عن لسانهم .

(٢) هنا لم يفرقه مصحح ط ما بيننا من مراد الشافعي غير كلمة هـ ورأى هـ فجعلها هـ وراء هـ ! !

(٣) يريد الشافعي بالاثنتين نفسه ومناظره .

٤٢٢ — قال : لا .

٤٢٣ — قلتُ أفتعلمُ من أدركتَ من أعلامِ المسلمين الذين

أفتروا ، عاشوا أو ماتوا (١) ، وقد يختلفون في بعض أمور ، عن

من قبلهم ؟

٤٢٤ — قال : نعم .

٤٢٥ — قلتُ : فقل فيهم ما شئت ؟

٤٢٦ — [قال] (٢) : فإن قلتُ : قالوا بما لا يسعهم .

٤٢٧ — قلتُ : فقد خالفتَ اجتماعهم .

٤٢٨ — قال : أجل .

٤٢٩ — قال : قدحُ هذا !

٤٣٠ — قلتُ : أفيستقيم القياسُ ؟

٤٣١ — قال : نعم .

٤٣٢ — قلتُ : فإن قالوا فاختلعا ، يستقيم أن يعضوا

على القياس ؟

٤٣٣ — قال : فإن قلتُ : لا ؟

(١) ط هـ عاشوا وماتوا .

(٢) كلمة هـ قال هـ زدناها لنفص كلام الشافعي عن كلام مناظره . وشي محذوفة في النسختين .



٤٣٢ — فإن وَرَدَ أمرٌ مُشْتَبِهٌ ، يَحْتَمِلُ حَكْمَيْنِ مُخْتَلِفَيْنِ ، فَاجْتِهَدْ . تَخَلَّفَتْ اجْتِهَادُ اجْتِهَادٍ غَيْرِهِ — وَسَمِعَهُ أَنْ يَقُولَ بَشِيءٌ ، وَغَيْرُهُ بِخِلَافِهِ . وَهَذَا قَلِيلٌ إِذَا نُظِرَ فِيهِ .

٤٣٣ — قال : فما جُنتُك فيما قلت ؟

٤٣٤ — قلتُ له : الاستدلالُ بِالْكِتَابِ وَالسُّنَّةِ وَالْإِجْمَاعِ .

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٤٣٥ — قال : فاذا ذكر الفرقَ بين حكم<sup>(١)</sup> الاختلاف ؟

٤٣٦ — قلتُ له : قال اللهُ عزَّ وجلَّ ﴿ وَلَا تَكُونُوا كَالَّذِينَ تَفَرَّقُوا وَاخْتَلَفُوا مِنْ بَعْدِ مَا جَاءَهُمُ الْبَيِّنَاتُ ﴾<sup>(٢)</sup> .

وقال : ﴿ وَمَا تَفَرَّقَ الَّذِينَ أُوتُوا الْكِتَابَ إِلَّا مِنْ بَعْدِ مَا جَاءَهُمُ الْبَيِّنَةُ ﴾<sup>(٣)</sup> .

٤٣٧ — قال : ﴿ وَمَا تَفَرَّقَ الَّذِينَ أُوتُوا الْكِتَابَ إِلَّا مِنْ بَعْدِ مَا جَاءَهُمُ الْبَيِّنَةُ ﴾<sup>(٣)</sup> .

٤٣٨ — فإنما رأيتُ اللهُ دَمَ الاختلافِ في الموضعِ الذي أقيمُ عليهمُ الحجَّةُ ، ولم يَأْذَنْ لِمِ فِيهِ .

٤٣٩ — فإذا اجْتَهَدَ مَنْ لَهُ أَنْ يَجْتَهِدَ وَسَمِعَهُ أَنْ يَقُولَ بِمَا وَجَدَ الدَّلَالَةَ عَلَيْهِ ، بَأَن يَكُونَ فِي مَعْنَى كِتَابٍ أَوْ سُنَّةٍ أَوْ إِجْمَاعٍ .

(١) ط و حكيم . وما في الأصل صحيح ، لإرادة المصدر ، الذي هو جنس .

(٢) سورة آل عمران آية ١٠٦ .

(٣) سورة البينة آية ٤ .

٤٢٤ — قلتُ : ففهمنا . فَرَّعَ كُلُّ وَاحِدٍ مِنَ اخْتِلَافَيْنِ أَنَّ الَّذِي قَالَ الْقِيَمُ ؟

٤٢٥ — قل : من قلتُ : سَمِعُ الاختلافَ في هذا الموضعِ<sup>(١)</sup> .

٤٢٦ — قلتُ : قد زعمتُ أَنَّ في اختلافٍ كُلِّ وَاحِدٍ مِنَ اخْتِلَافَيْنِ حَكْمَيْنِ ، وتركْتَ قَوْلَكَ : نِسْ الاختلافَ إِلَّا حَكْمًا وَاحِدًا ؟

٤٢٧ — قال : ما تقولُ أنت ؟

٤٢٨ — قلتُ : الاختلافُ أَوْجُهَانِ :

٤٢٩ — فما كانَ اللهُ فِيهِ [نَفْسٌ حَكِيمَةٌ] أَوْ لِرَسُولِهِ سُنَّةٌ ، أَوْ لِلْمُسْلِمِينَ فِيهِ إِجْمَاعٌ — : لَمْ يَسْمَعْ أَحَدًا عَاصٍ مِنْ هَذَا وَاحِدًا أَنْ يَخَالَفَهُ .

٤٣٠ — وما لم يكن فيه من هذا واحدٌ كان لأهل العلم (الاجتهادُ فيه ، بطلبِ الشبهة<sup>(١)</sup> بأحدِ هذه الوجوه الثلاثة .

٤٣١ — فإذا اجْتَهَدَ مَنْ لَهُ أَنْ يَجْتَهِدَ وَسَمِعَهُ أَنْ يَقُولَ بِمَا وَجَدَ الدَّلَالَةَ عَلَيْهِ ، بَأَن يَكُونَ فِي مَعْنَى كِتَابٍ أَوْ سُنَّةٍ أَوْ إِجْمَاعٍ .

(١) و الشبهة ه تطلق أيضا على التل ، كالشبهة والنسبة . انظر القاموس .

(١) و الشبهة ه تطلق أيضا على التل ، كالشبهة والنسبة . انظر القاموس .

(١) و الشبهة ه تطلق أيضا على التل ، كالشبهة والنسبة . انظر القاموس .

(١) و الشبهة ه تطلق أيضا على التل ، كالشبهة والنسبة . انظر القاموس .

(١) و الشبهة ه تطلق أيضا على التل ، كالشبهة والنسبة . انظر القاموس .

(١) و الشبهة ه تطلق أيضا على التل ، كالشبهة والنسبة . انظر القاموس .

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٤٤٢ — وقلتُ: وقال الله: ﴿لَمَنْ تَرَضَوْنَ مِنَ الشُّهَدَاءِ﴾ (١) .

وقال: ﴿لَمَنْ دَوَّيَ عَدْلٌ مِنْكُمْ﴾ (٢) . أفرايتَ حاكمين شهد

عندها شاهدان بأعينهما، فكنا عند أحد الحاكمين عدلين،

وعند الآخر غير عدلين ؟

٤٤٣ — قال: فعلى الذي ها عنده عدلان أن يجزها،

وعلى الآخر، الذي ها عنده غير عدلين — : أن يردّها .

٤٤٤ — قلتُ له: فهذا الاختلاف ؟

٤٤٥ — قال: نعم .

٤٤٦ — قلتُ له: أراك إذن جعلتَ الاختلافَ حكيمين ؟

٤٤٧ — فقال: لا يوجدُ في الغيبِ إلا هذا . وكلُّ واني

اختلفَ فيه وحُكِّمَهُ فقد أدَّى ما عليه .

٤٤٨ — قلتُ: فحكماً قلنا .

٤٤٩ — وقلتُ له: قال الله عزَّ وجلَّ: ﴿لَمَنْ دَوَّيَ عَدْلٌ

مِنْكُمْ هَدْيًا بَالِغَ الْكَفَّةِ﴾ (٣) . فإنَّ حكمَ عدلانٍ في موضعٍ

(١) سورة البقرة آية ٢٨٢

(٢) سورة البقرة آية ٩٥

٤٣٩ — قال: قد عرفتُ هذا، فما العِجَةُ الذي دَلَّكَ على

أنَّ ما ليس فيه نصُّ حكمٍ مُسَمَّعٍ فيه الاختلافُ ؟

٤٤٠ — قلتُ له: فرضَ الله على الناسِ التَّوَجُّهَ في القبلة

إلى المسجد الحرام، فقال: ﴿لَمَنْ وَجَّهَ حَيْثُ خَرَجْتَ قَوْلًا وَجَّهَكَ

شَطْرَ الْمَسْجِدِ الْحَرَامِ، وَإِنِّي لِلْحَقِّ مِنَ رَبِّكَ، وَمَا اللَّهُ بِغَافِلٍ

عَمَّا تَعْمَلُونَ . وَمَنْ حَيْثُ خَرَجْتَ قَوْلًا وَجَّهَكَ شَطْرَ الْمَسْجِدِ

الْحَرَامِ، وَحَيْثُ مَا كُنْتُمْ فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ﴾ (١) .

أفرايتَ إذا سافرنا واختلفنا في القبلة، فكان الأُغْلَبُ على أنها

في جهة، والأُغْلَبُ على غيري في جهة، ما الفرضُ علينا ؟

٤٤١ — فإن قلتَ الكعبة: [فهي] وإن كانت (٢) ظاهرة

في موضعها فهي مغيبة عن مَنْ نأى عنها، فليهم أن يطلبوا

التَّوَجُّهَ لها غايةً جُودِهم، على ما أمَّكَنَهم، وغلب بالذِّلالَاتِ في

قلوبهم . فإذا فَعَلُوا وَسَمِعَهُم الاختلافُ، وكان كلُّ مؤدِّيًا

للفرض عليه، بالاجتهاد في طلب الحقِّ الغيبِ عنه .

(١) سورة البقرة آية ١٤٩، ١٥٠

(٢) ط « قال الكعبة وإن كانت ه الخ . وهو خطأ وخالف الأصل ، فإن

هذا الحرام من الشافعي للظاهر، وإن وافقه — وهو لا بد موافقه — على أن الفرض

الكعبة في استقبال القبلة . وكلية ه فهي ه لم تذكر في الخطوط، ورأيتهم ضرورية

لتمسحيت السكّام .

(٣) ط « تأووا » .

٤٥٥ — قال : نعم .

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٤٥٦ — قال :<sup>(١)</sup> : رأيي وإن قلت هذا فلما غيري بخائفني وإياك ، ولا يقبل هذا منا . فبين السنتي التي دلت على سعة الاختلاف ؟

٤٥٧ — قلت : أخبرنا (عبد العزيز بن محمد عن يزيد بن

عبد الله بن الحارث عن محمد بن إبراهيم عن بسر بن سعيد عن [ أبي قيس مولى عمرو بن العاص ] عن عمرو بن العاص<sup>(٢)</sup> أنه سمع رسول الله صلى الله عليه وسلم يقول : « إذا حكم الحاكم فاجتهد فأصاب فله أجران . وإذا حكم فاجتهد ثم أخطأ<sup>(٣)</sup> فله أجر » .

فله أجر » .

(١) في ط د قاله مرة واحدة ، ولكنها ثابتة مرتين في المخطوط ، وهو

أجود ، لأن هذا بدء حوار جديد بينهما ، فقال الثاني : يريد نفسه ، ثم

حكى عن مناظره أنه قال : الخ .

(٢) الزيادة لم تذكر في المخطوط ، وهي ثابتة في إسناد الحديث ، وقد

زيدت في ط .

(٣) ط د فأخطأ ، وما هنا هو الذي في المخطوط ، وهو موافق لما في الرسالة

(رقم ١٤٥٩) .

بشيء ، وأخران في موضع بأكثر أو أقل منه ، فكأن قد اجتهد وأدى ما عليه ، وإن اختلف .

٤٥٨ — وقال : ثم والثاني تخالفون تشريحاً فعضوهم

والجبرؤون في التشايع واضربوا ، فبين أضعفكم<sup>(١)</sup> فلا تبغوا عليهن سبيلاً . إن الله كنن علياً كبيراً<sup>(٢)</sup> .

٤٥٩ — وقال عز وجل : ثم فبين خفيته ألا يفتيا حدود الله

ولا جناح عليهما فيما افتكت به<sup>(٣)</sup> .

٤٥٢ — أرايت إذا فعلت امرأتين فعلاً واحداً ، وكان زوج

إحداً يخاف تشريها ، وزوج الأخرى لا يخاف به تشريها ؟

٤٥٣ — قال : يسع الذي يخاف به التشري العيلة والمجرة<sup>(٤)</sup>

والغريب ، ولا يسع الآخر الغريب .

٤٥٤ — وقت : وهكذا يسع الذي يخاف أن لا يقيم

زوجته حدود الله الأخذ منها ، ولا يسع الآخر ، وإن استوى

ففسلأحدا ؟

(١) في الأصل إلى هنا ، فاعلمنا باقي الآية .

(٢) سورة النساء ، آية ٣٤ (٣) سورة البقرة آية ٢٢٩

(٤) د المجرة د حي : الحجر ، ضد الرسل . يقال : حجره حجراً وهو جراً

ولا يم د المجرة د . وفي ط د وأجبر وهو مخالف للمخطوط .

## بيان فرائض الله تبارك وتعالى

أمرنا الربيع بن سليمان قال : قال الشافعي :

٤٦١ — فَرَضَ اللهُ عَزَّ وَجَلَّ فِي كِتَابِهِ مِنْ وَجْهَيْنِ :

٤٦٢ — أَحَدُهُمَا : أَنَّ فِيهِ كَيْفًا فَرَضَ بَعْضُهَا <sup>(١)</sup> ، حَتَّى

اسْتَقْنَى فِيهِ بِالْفَتْرِيلِ عَنِ التَّائِيلِ وَعَنِ الْخَبَرِ .

٤٦٣ — وَالْآخَرُ : أَنَّهُ أَحْكَمَ - فَرَضَهُ بِكِتَابِهِ ، وَبَيْنَ كَيْفٍ

<sup>(٢)</sup> عَلَى (الْإِنْسَانِ) نَبِيٍّ ، صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ .

٤٦٤ — ثُمَّ أُثْبِتَ فَرَضَ مَا فَرَضَ رَسُولُ اللهِ صَلَّى اللهُ

عَلَيْهِ وَسَلَّمَ فِي كِتَابِهِ بِقَوْلِهِ عَزَّ وَجَلَّ : ﴿ مَا آتَاكُمْ الرَّسُولُ

فَخُذُوهُ ، وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا ﴾ <sup>(٣)</sup> .

٤٦٥ — وَبَقِيَ لَهُ تَبَارَكَ اسْمُهُ : ﴿ فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ

حَتَّى يُحْكُمُوا لَكَ فِيهَا سَبْعَ سَبْعِينَ نَجْمًا <sup>(٤)</sup> ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ

خَرَجًا مِنْ قَضَيْتَ وَيُسَئِرُوا تَعْلِيلًا <sup>(٥)</sup> .

(١) و بعضهما ، أي الفرائض .

(٢) « محي » أي الغفران . أي بضم الغين الميم . كما ليس في الفقرة السابقة .

وفي ط « حو » . سورة المجير آية ٧

(٣) « إلى » أي : تسليما .

(٤) سورة النساء آية ٦٥ .

٤٥٨ — قال يزيد بن الحارث : فحدثني بهذا الحديث أبا بكر

بن محمد بن عمرو بن حزم ، فقال : هكذا حدثني أبو سلمة

عن أبي هريرة <sup>(١)</sup> .

٤٥٩ — قال : وماذا ؟

٤٦٠ — قلت : ما وصفنا من أن الحكماء والفتين <sup>(٢)</sup> إلى

اليوم قد اختلفوا في بعض ما حكموا فيه وأفتوا ، وهم لا يحكمون

ويفتون إلا بما يسمعهم عندهم . وهذا عندك إجماع . فكيف

يكون إجماعا إذا كن موجودا في أفعالهم الاختلاف <sup>(٣)</sup> ؟ !

(١) مضى الحديث بسناده وإسكان كلام عليه في (رقم ١٦٤، ١٦٣) .

(٢) الماء النابتة ثابتة في المخطوط . وانظر ما مضى في (رقم ١٦٨، ١٦٩) .

وفي ط « والفتين » على الجوزة .

(٣) ط زيادة « وراثة أعلم » .

☆ ☆

٤٧٠ — وأول ما تبدأ به من الشرائع الصلاة .

٤٧١ — فمن نجدها ثابتة على البائعين غير المغلوبين على عقولهم ، ساقطة عن الحيض أيام حيضهن .

٤٧٢ — ثم نجد الفريضة منها والثاقبة مجتمعتين في أن لا يجوز الدخول في واحدة منهما إلا بطهارة الماء ، في السفر ، وإذا كان الماء معدوماً ما كان موجدًا ،<sup>(١)</sup> والتيمم<sup>(٢)</sup> في السفر ، وإذا كان الماء معدوماً في الحضر<sup>(٣)</sup> ، أو كان الماء مريضاً لا يطبق الوضوء ، فلو ف تلف في الوضوء<sup>(٤)</sup> أو زيادته في المائية .

٤٧٣ — ونجدها مجتمعتين في أن لا يكتلياً معاً إلا متوجّهين إلى الكعبة ، ما كانا في الحضر ونازلين بالأرض .

٤٧٤ — ونجدها إذا كانا مسافرين تفرق حالهما : فيكون للمعتلي (تطوعاً إن كان ، ركباً أن يتوجه حيث توجهت به

(١) ط وأو التيمم .

(٢) ط وإذا كان الماء معدوماً في الحضر .

(٣) يعني : بسبب لوضوء . وني ط وفي المغنوة .

٤٧٦ — ويتبعه عز وجل : ما رزقكم الله من أموال ولا تمنوا

مع غير آية في القرآن بهذا المعنى .

٤٧٧ — فمن قيل عن رسول الله صلى الله عليه وسلم فيفرض الله عز وجل قيل<sup>(١)</sup> .

☆ ☆

٤٧٨ — قال الشافعي : فالفرع من اجتماع في أنها ثابتة على ما فرضت عليه ، ثم تفرقت شرائعها بما تفرق الله عز وجل ، ثم رسوله صلى الله عليه وسلم .

٤٧٩ — فيفترق<sup>(٢)</sup> بين ما تفرق منها ، ويجمع بين ما جمع منها ، فلا يقاس فرع شريعة على غيرها<sup>(٣)</sup> .

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(١) سورة الأحزاب آية ٣٦

(٢) انظر الرسالة في الفقرات (رقم ٩٦ — ٩٨ ، ٩٨ — ١٠٣ ، ١٠٣ — ١٠٩ ، ١٠٩ — ١١٠ ، ١١٠ — ١١١ ، ١١١ — ١١٢ ، ١١٢ — ١١٣ ، ١١٣ — ١١٤ ، ١١٤ — ١١٥ ، ١١٥ — ١١٦ ، ١١٦ — ١١٧ ، ١١٧ — ١١٨ ، ١١٨ — ١١٩ ، ١١٩ — ١٢٠ ، ١٢٠ — ١٢١ ، ١٢١ — ١٢٢ ، ١٢٢ — ١٢٣ ، ١٢٣ — ١٢٤ ، ١٢٤ — ١٢٥ ، ١٢٥ — ١٢٦ ، ١٢٦ — ١٢٧ ، ١٢٧ — ١٢٨ ، ١٢٨ — ١٢٩ ، ١٢٩ — ١٣٠ ، ١٣٠ — ١٣١ ، ١٣١ — ١٣٢ ، ١٣٢ — ١٣٣ ، ١٣٣ — ١٣٤ ، ١٣٤ — ١٣٥ ، ١٣٥ — ١٣٦ ، ١٣٦ — ١٣٧ ، ١٣٧ — ١٣٨ ، ١٣٨ — ١٣٩ ، ١٣٩ — ١٤٠ ، ١٤٠ — ١٤١ ، ١٤١ — ١٤٢ ، ١٤٢ — ١٤٣ ، ١٤٣ — ١٤٤ ، ١٤٤ — ١٤٥ ، ١٤٥ — ١٤٦ ، ١٤٦ — ١٤٧ ، ١٤٧ — ١٤٨ ، ١٤٨ — ١٤٩ ، ١٤٩ — ١٥٠ ، ١٥٠ — ١٥١ ، ١٥١ — ١٥٢ ، ١٥٢ — ١٥٣ ، ١٥٣ — ١٥٤ ، ١٥٤ — ١٥٥ ، ١٥٥ — ١٥٦ ، ١٥٦ — ١٥٧ ، ١٥٧ — ١٥٨ ، ١٥٨ — ١٥٩ ، ١٥٩ — ١٦٠ ، ١٦٠ — ١٦١ ، ١٦١ — ١٦٢ ، ١٦٢ — ١٦٣ ، ١٦٣ — ١٦٤ ، ١٦٤ — ١٦٥ ، ١٦٥ — ١٦٦ ، ١٦٦ — ١٦٧ ، ١٦٧ — ١٦٨ ، ١٦٨ — ١٦٩ ، ١٦٩ — ١٧٠ ، ١٧٠ — ١٧١ ، ١٧١ — ١٧٢ ، ١٧٢ — ١٧٣ ، ١٧٣ — ١٧٤ ، ١٧٤ — ١٧٥ ، ١٧٥ — ١٧٦ ، ١٧٦ — ١٧٧ ، ١٧٧ — ١٧٨ ، ١٧٨ — ١٧٩ ، ١٧٩ — ١٨٠ ، ١٨٠ — ١٨١ ، ١٨١ — ١٨٢ ، ١٨٢ — ١٨٣ ، ١٨٣ — ١٨٤ ، ١٨٤ — ١٨٥ ، ١٨٥ — ١٨٦ ، ١٨٦ — ١٨٧ ، ١٨٧ — ١٨٨ ، ١٨٨ — ١٨٩ ، ١٨٩ — ١٩٠ ، ١٩٠ — ١٩١ ، ١٩١ — ١٩٢ ، ١٩٢ — ١٩٣ ، ١٩٣ — ١٩٤ ، ١٩٤ — ١٩٥ ، ١٩٥ — ١٩٦ ، ١٩٦ — ١٩٧ ، ١٩٧ — ١٩٨ ، ١٩٨ — ١٩٩ ، ١٩٩ — ٢٠٠ ، ٢٠٠ — ٢٠١ ، ٢٠١ — ٢٠٢ ، ٢٠٢ — ٢٠٣ ، ٢٠٣ — ٢٠٤ ، ٢٠٤ — ٢٠٥ ، ٢٠٥ — ٢٠٦ ، ٢٠٦ — ٢٠٧ ، ٢٠٧ — ٢٠٨ ، ٢٠٨ — ٢٠٩ ، ٢٠٩ — ٢١٠ ، ٢١٠ — ٢١١ ، ٢١١ — ٢١٢ ، ٢١٢ — ٢١٣ ، ٢١٣ — ٢١٤ ، ٢١٤ — ٢١٥ ، ٢١٥ — ٢١٦ ، ٢١٦ — ٢١٧ ، ٢١٧ — ٢١٨ ، ٢١٨ — ٢١٩ ، ٢١٩ — ٢٢٠ ، ٢٢٠ — ٢٢١ ، ٢٢١ — ٢٢٢ ، ٢٢٢ — ٢٢٣ ، ٢٢٣ — ٢٢٤ ، ٢٢٤ — ٢٢٥ ، ٢٢٥ — ٢٢٦ ، ٢٢٦ — ٢٢٧ ، ٢٢٧ — ٢٢٨ ، ٢٢٨ — ٢٢٩ ، ٢٢٩ — ٢٣٠ ، ٢٣٠ — ٢٣١ ، ٢٣١ — ٢٣٢ ، ٢٣٢ — ٢٣٣ ، ٢٣٣ — ٢٣٤ ، ٢٣٤ — ٢٣٥ ، ٢٣٥ — ٢٣٦ ، ٢٣٦ — ٢٣٧ ، ٢٣٧ — ٢٣٨ ، ٢٣٨ — ٢٣٩ ، ٢٣٩ — ٢٤٠ ، ٢٤٠ — ٢٤١ ، ٢٤١ — ٢٤٢ ، ٢٤٢ — ٢٤٣ ، ٢٤٣ — ٢٤٤ ، ٢٤٤ — ٢٤٥ ، ٢٤٥ — ٢٤٦ ، ٢٤٦ — ٢٤٧ ، ٢٤٧ — ٢٤٨ ، ٢٤٨ — ٢٤٩ ، ٢٤٩ — ٢٥٠ ، ٢٥٠ — ٢٥١ ، ٢٥١ — ٢٥٢ ، ٢٥٢ — ٢٥٣ ، ٢٥٣ — ٢٥٤ ، ٢٥٤ — ٢٥٥ ، ٢٥٥ — ٢٥٦ ، ٢٥٦ — ٢٥٧ ، ٢٥٧ — ٢٥٨ ، ٢٥٨ — ٢٥٩ ، ٢٥٩ — ٢٦٠ ، ٢٦٠ — ٢٦١ ، ٢٦١ — ٢٦٢ ، ٢٦٢ — ٢٦٣ ، ٢٦٣ — ٢٦٤ ، ٢٦٤ — ٢٦٥ ، ٢٦٥ — ٢٦٦ ، ٢٦٦ — ٢٦٧ ، ٢٦٧ — ٢٦٨ ، ٢٦٨ — ٢٦٩ ، ٢٦٩ — ٢٧٠ ، ٢٧٠ — ٢٧١ ، ٢٧١ — ٢٧٢ ، ٢٧٢ — ٢٧٣ ، ٢٧٣ — ٢٧٤ ، ٢٧٤ — ٢٧٥ ، ٢٧٥ — ٢٧٦ ، ٢٧٦ — ٢٧٧ ، ٢٧٧ — ٢٧٨ ، ٢٧٨ — ٢٧٩ ، ٢٧٩ — ٢٨٠ ، ٢٨٠ — ٢٨١ ، ٢٨١ — ٢٨٢ ، ٢٨٢ — ٢٨٣ ، ٢٨٣ — ٢٨٤ ، ٢٨٤ — ٢٨٥ ، ٢٨٥ — ٢٨٦ ، ٢٨٦ — ٢٨٧ ، ٢٨٧ — ٢٨٨ ، ٢٨٨ — ٢٨٩ ، ٢٨٩ — ٢٩٠ ، ٢٩٠ — ٢٩١ ، ٢٩١ — ٢٩٢ ، ٢٩٢ — ٢٩٣ ، ٢٩٣ — ٢٩٤ ، ٢٩٤ — ٢٩٥ ، ٢٩٥ — ٢٩٦ ، ٢٩٦ — ٢٩٧ ، ٢٩٧ — ٢٩٨ ، ٢٩٨ — ٢٩٩ ، ٢٩٩ — ٣٠٠ ، ٣٠٠ — ٣٠١ ، ٣٠١ — ٣٠٢ ، ٣٠٢ — ٣٠٣ ، ٣٠٣ — ٣٠٤ ، ٣٠٤ — ٣٠٥ ، ٣٠٥ — ٣٠٦ ، ٣٠٦ — ٣٠٧ ، ٣٠٧ — ٣٠٨ ، ٣٠٨ — ٣٠٩ ، ٣٠٩ — ٣١٠ ، ٣١٠ — ٣١١ ، ٣١١ — ٣١٢ ، ٣١٢ — ٣١٣ ، ٣١٣ — ٣١٤ ، ٣١٤ — ٣١٥ ، ٣١٥ — ٣١٦ ، ٣١٦ — ٣١٧ ، ٣١٧ — ٣١٨ ، ٣١٨ — ٣١٩ ، ٣١٩ — ٣٢٠ ، ٣٢٠ — ٣٢١ ، ٣٢١ — ٣٢٢ ، ٣٢٢ — ٣٢٣ ، ٣٢٣ — ٣٢٤ ، ٣٢٤ — ٣٢٥ ، ٣٢٥ — ٣٢٦ ، ٣٢٦ — ٣٢٧ ، ٣٢٧ — ٣٢٨ ، ٣٢٨ — ٣٢٩ ، ٣٢٩ — ٣٣٠ ، ٣٣٠ — ٣٣١ ، ٣٣١ — ٣٣٢ ، ٣٣٢ — ٣٣٣ ، ٣٣٣ — ٣٣٤ ، ٣٣٤ — ٣٣٥ ، ٣٣٥ — ٣٣٦ ، ٣٣٦ — ٣٣٧ ، ٣٣٧ — ٣٣٨ ، ٣٣٨ — ٣٣٩ ، ٣٣٩ — ٣٤٠ ، ٣٤٠ — ٣٤١ ، ٣٤١ — ٣٤٢ ، ٣٤٢ — ٣٤٣ ، ٣٤٣ — ٣٤٤ ، ٣٤٤ — ٣٤٥ ، ٣٤٥ — ٣٤٦ ، ٣٤٦ — ٣٤٧ ، ٣٤٧ — ٣٤٨ ، ٣٤٨ — ٣٤٩ ، ٣٤٩ — ٣٥٠ ، ٣٥٠ — ٣٥١ ، ٣٥١ — ٣٥٢ ، ٣٥٢ — ٣٥٣ ، ٣٥٣ — ٣٥٤ ، ٣٥٤ — ٣٥٥ ، ٣٥٥ — ٣٥٦ ، ٣

٤٧٨. — وَجَبْدُ اللَّزَاءِ إِذَا كَانَ لَهُ مَالٌ حَاضِرٌ تَجِبُ فِيهِ الزَّكَاةُ ،  
وَكَانَ عَلَيْهِ دَيْنٌ مِثْلُهُ - : زَالَتْ عَنْهُ الزَّكَاةُ ، حَتَّى لَا يَكُونَ  
عَلَيْهِ مِنْهَا شَيْءٌ فِي تِلْكَ الْحَالِ . وَالصَّلَاةُ لَا تَنْزُولٌ فِي حَالٍ ،  
يُؤَدِّيهَا كَمَا أَطْلَقَهَا .

فَالرَّبِيعُ :

٤٧٩. — وَالشَّانِعِيُّ قَوْلُ آخِرُ : إِذَا كَانَ عَلَيْهِ دَيْنٌ عَشْرِينَ  
دِينَارًا وَلَهُ مِثْلُهَا فَعَلَيْهِ الزَّكَاةُ يُؤَدِّيهَا ، مِنْ قَبْلِ أَنْ اللَّهُ عَزَّ  
وَجَلَّ قَالَ : ﴿ خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ  
بِهَا ۖ ﴾ (١) . فَلَمَّا كَانَتْ هَذِهِ الْمَعْرُوفُونَ لَوْ وَهَبَهَا جَارَتْ هَيْئَتُهُ ،  
وَلَوْ تَصَدَّقَ بِهَا جَارَتْ صَدَقَتُهُ ، وَلَوْ تَلَقَّتْ كَانَتْ مِنْهُ ، فَلَمَّا  
كَانَتْ أَحْكَامُهَا كُلُّهَا تَدُلُّ عَلَى أَنَّهَا مَالٌ مِنْ مَالِهِ وَجِبَتْ عَلَيْهِ  
فِيهَا الزَّكَاةُ ، لِتَقُولَ اللَّهُ تَبَارَكَ وَتَعَالَى : ﴿ خُذْ مِنْ أَمْوَالِهِمْ ﴾  
الْآيَةُ (٢) .

(١) - سورة التوبة آية ١٠٣

(٢) هذه الفقرة زيادة من الربيع على الكتاب ، كما هو ظاهر واضح . وفي  
هذه المسئلة قولان معروفان في لغة الشافعي ، كما حكى الربيع . ومن العلماء من على أن  
يقول بعدم الوجوب هو المذهب القديم للشافعي ، وأن القول بالوجوب هو  
جديد ، وأنه الراجح عندهم . انظر المتن الكبير للبيهقي (٤ : ١٠٨ - ١٠٩) =

دَابَّتُهُ ، يُؤَدِّي إِيَّاهُ . وَلَا تَجِبُ ذَلِكَ الْمَعْرُوفُ فَرِيضَةً بِحَالٍ أَبَدًا ،  
إِلَّا فِي حَالٍ وَاحِدَةٍ مِنَ الْخُرُوفِ (١) .

٤٧٥. — وَجَبْدُ الْمَصَلِّي صَلَاةً تَجِبُ عَلَيْهِ - إِذَا كَانَ يَطْلِقُ  
وَيُمْكِنُهُ الْقِيَامُ : لَمْ يُخْرِجْ عَنْهُ الصَّلَاةُ إِلَّا قَائِمًا . وَجَبْدُ السَّائِلِ  
يُجَوِّزُ لَهُ أَنْ يَصِلَ جَالِسًا .

٤٧٦. — وَجَبْدُ الْمَصَلِّي فَرِيضَةً يُؤَدِّيهَا فِي الْوَقْتِ قَائِمًا ، فَإِنْ لَمْ  
يَقْدِرْ أَذَاهَا جَالِسًا ، فَإِنْ لَمْ يَقْدِرْ أَذَاهَا مُضْطَجِعًا ، سَاجِدًا أَنْ  
قَدَّرَ ، وَمُؤَمِّمًا إِنْ لَمْ يَقْدِرْ .

الزَّكَاةُ

✱ ✱

٤٧٧. — وَجَبْدُ الزَّكَاةِ فَرِيضًا تُجَامِعُ الصَّلَاةَ وَتُخَالِفُهَا . وَلَا  
تَجِبُ الزَّكَاةُ تَكُونُ إِلَّا ثَابِتَةً أَوْ سَاقِطَةً . فَإِذَا ثَبِتَتْ لَمْ يَكُنْ  
فِيهَا إِلَّا أَذَاهَا تَمَّا وَجِبَ (٢) ، فِي جَمِيعِ الْحَالَاتِ مُسْتَوِيًا ،  
لَيْسَ يَخْتَلِفُ (٣) بَعْدَرُ ، كَمَا اخْتَلَفَتْ تَأْدِيَةُ الصَّلَاةِ قَائِمًا  
أَوْ قَاعِدًا .

(١) انظر الرسالة (رقعة ٤٩٥ - ٥١٦) .

(٢) ط و وجبت هـ .

(٣) يعني : ليس يختلف أدؤها . وفي ط و ليست تختلف هـ .



له في أن يقصر من الصوم شيئاً . كما يرخص في أن يقصر من الصلاة ، ولا يكون صومه مختلفاً باختلاف حالته في المرض .  
والحصة .

٤٨٣ — ونجده إذا جامع في صيام شهر رمضان وهو واجب

اعتق ، وإن<sup>(١)</sup> جامع في الحج نحو بدنة ، وإن جامع في الصلاة استغفر ، ولم تكن<sup>(٢)</sup> عليه كفارة . والجامع في هذه المذلات كلها محرم . ثم يكون جامع كثير محرم لا يكون<sup>(٣)</sup> في شيء منه كفارة . ثم نجده يجمع في صوم واجب عليه في قنص ، شهر رمضان أو كفارة قتل أو ظهار — : فلا يكون عليه كفارة ، ويكون عليه البذل في هذا كله .

٤٨٤ — ونجد المنع عليه والحائض لا صوم عليها ولا صلاة .

فإذا أفاق المنع عليه وطهرت الحائض فعليها قضاء ما مضى من الصوم في أيام إغصاء هذا وجبت هذه . وليس على الحائض

- (١) ط و و إذا .
- (٢) ط و و لم يكن .
- (٣) ط و و لا يكون .

ول الشافعي رحمه الله تعالى :

٤٨٥ — ونجد (البركة ذات المير تروى عنها الصلاة في أيام حبيبها ، ولا تروى عنها الزكاة . وكذلك الصبي والمغلوب على عقله .

## باب الصوم

قال الشافعي رحمه الله تعالى :

٤٨٦ — ونجد الصوم فرضاً بوقت ، كما أن الصلاة فرض بوقت .

٤٨٧ — ثم نجد الصوم مؤرخاً فيه للمسافر أن يدعه وهو مطبق له في وقته ، ثم ينقضه بعد وقته . وليس هكذا الصلاة ، لا يرخس في تأخير الصلاة عن وقتها إلى يوم غيره ، ولا يرخس

والجمهور النووي (٥ : ٣٤٣ — ٣٤٩) . والظاهر لي من كلام الشافعي في الزم (٢ : ٤٣ — ٤٣) أنه يرى بتحديد وجوب الزكاة في حال الدين بما إذا لم يقص عليه القاضي بالدين ، وأنه تردد بعد ذلك في القول بالوجوب مطلقاً ، لأنه قال : « ولو قضى عليه الشيطان بالدين قبل حلول ثم حال الحلول قبل أن يقبضه الغريم ، لم يكن عليه فيه زكاة ، لأن المال صار للغريم ، دونه قبل الحلول . وفيه قول ثان : أن عليه فيه الزكاة ، من قبل أنه لو طلب كان منه ، ومن قبل أنه لو ضار له مان غير هذا كان له أن يحبس هذا المال ، وأن يقضي الغريم ، من غيره . »

وُفِيْدَ حَجَّهٖ فَيَمْنِي فِيْهِ فَاسَدًا ، لَا يَكُوْنُ لَهُ غَيْرُ ذَلِكَ ،  
ثُمَّ يُبْدِلُهُ وَيَقْتَدِي .

٤٨٩ — والْحُجُّ فِي وَقْتٍ وَالصَّلَاةُ فِي وَقْتٍ ، فَإِنْ أَخْطَأَ رَجُلًا  
فِي وَقْتِهِ لَمْ يَحْزِرْ عَنْهُ الْحُجُّ . ثُمَّ وَجَدْتُهَا مَأْمُورِينَ أَنْ يَدْخُلَ  
الصَّلَاةَ فِي وَقْتٍ ، فَإِنْ دَخَلَ الصَّلَاةَ قَبْلَ الْوَقْتِ لَمْ يَحْزِرْ عَنْهُ  
صَلَاتُهُ ، وَإِنْ دَخَلَ الْحُجَّ قَبْلَ الْوَقْتِ أَجْرًا عَنْهُ حَجَّهٖ .  
٤٩٠ — وَوَجَدْتُ لِلصَّلَاةِ أَوَّلًا وَآخِرًا ، فَوَجَدْتُ أَوَّلَهَا الْتَكْبِيرَ ،

وَأَخْرَجَهَا التَّلَامِيذَ . وَوَجَدْتُهَا إِذَا عَمَلَ مَا يُفْسِدُهَا فِيمَا بَيْنَ أَوَّلِهَا  
وَأَخْرَجَهَا أَفْسَدُهَا كُلِّهَا . وَوَجَدْتُ الْحُجَّ أَوَّلًا وَآخِرًا ، ثُمَّ أَجْزَاءَ  
بَعْدَهُ . فَأَوَّلُهُ الْإِحْرَامُ ، ثُمَّ آخِرُ أَجْزَائِهِ <sup>(١)</sup> الرَّغْمُ وَالْخِلَافُ  
وَالْتَعَرُّ . فَأَيُّهَا فَعَلَ هَذَا خَرَجَ مِنْ جَمِيعِ إِحْرَامِهِ ، فِي قَوْلِنَا  
وَدَلَالَةِ السُّنَّةِ ، إِلَّا مِنْ النِّسَاءِ خَاصَّةً ، وَفِي قَوْلِ غَيْرِنَا إِلَّا مِنْ  
النِّسَاءِ وَالطَّبِيبِ وَالْحَمِيْدِ . ثُمَّ وَجَدْتُ فِي هَذِهِ الْخِلَافِ إِذَا أَصَابَ  
النِّسَاءَ قَبْلَ يَحْيَايْنِ لَهُ <sup>(٢)</sup> تَحَرُّجٌ <sup>(بَدَلَةٌ)</sup> ، وَلَمْ يَكُنْ مُفْتَسِدًا حَجَّهٖ .

(١) فِي النَّسَائِيْنِ وَثُمَّ أَوَّلُ أَجْزَائِهِ وَرَعَوُ خُطْبُ صَدْرِهِ ، لَا يَكُوْنُ إِلَّا مِنْ  
النِّسَاءِ .

(٢) يَخْلُفُ وَثْنُ الْمَصْدَرِيَّةِ ، وَرَعَوُ حَرْفٌ ، وَثْنُ نَفْعِي كَثَرٌ مِنْ قَوْلِهِ . الْعَمَلُ  
الرَّسَالَةُ (رَقْم ١٦٨ ، ٧٢١ ، ١٧٣٢) .

قَضَاءُ الصَّلَاةِ فِي قَوْلِ أَحَدٍ ، وَلَا عَلَى النَّفْسِ عَلَيْهِ قَضَاءُ الصَّلَاةِ  
فِي قَوْلِنَا <sup>(١)</sup> .

٤٨٥ — وَوَجَدْتُ الْحُجَّ فَرْضًا عَلَى خَاصَّةٍ ، وَهُوَ مَنْ وَجَدَ  
إِلَيْهِ سَبِيلًا .

٤٨٦ — ثُمَّ وَجَدْتُ الْحُجَّ يُجَامِعُ الصَّلَاةَ فِي شَيْءٍ وَيُخَالِفُهَا  
فِي غَيْرِهِ .

٤٨٧ — فَأَمَّا مَا يُخَالِفُهَا فِيهِ : فَإِنَّ الصَّلَاةَ يَحِلُّ لَهُ فِيهَا أَنْ  
يَكُوْنَ لِأَبْسَا الثِّيَابِ ، وَيَحْرُمُ عَلَى الْحُجَّ .

٤٨٨ — وَيَحِلُّ لِلْحَاجِّ أَنْ يَكُوْنَ مَتَكَلِّمًا عَامِدًا ، وَلَا يَحِلُّ  
ذَلِكَ لِلْعَمَلِيِّ . وَفِيْدُ الْمَرْءِ صَلَاتُهُ فَلَا يَكُوْنُ لَهُ أَنْ يَغْنِيَ فِيْهَا ،  
وَيَكُوْنُ عَلَيْهِ أَنْ يَسْتَأْنِفَ صَلَاةً غَيْرَهَا بَدَلًا مِنْهَا ، وَلَا يَكْفُرُ ،

(١) ط وَوَعَلَى النَّفْسِ عَلَيْهِ الْحُجُّ . خُلُوفٌ حَرْفٌ ه لَّا ه . وَهُوَ خُطْبًا ،  
إِذَا عَمِلَ خِلَافَ قَوْلِ النَّاسِ فِيهِ . لِأَنَّ قَوْلَهُ أَنَّ النَّفْسَ عَلَيْهِ لَا يَقْضِي الصَّلَاةَ الَّتِي اسْتَعْرَقَ  
بِإِجَارَتِهِ وَتَقْبَلُ . قَالَ فِي الْأَمِّ (١ : ٦١) : ه وَإِذَا أَتَانِ النَّفْسَ عَلَيْهِ وَقَدْ بَقِيَ مِنْ  
النَّهَارِ قَسْرٌ مَا يَكْبُرُ فِيْهِ كَثِيرَةٌ وَاسْتَدْرَأَ الظُّهْرَ وَأَمْسَرَ ، وَلَمْ يَبْدُ مَا قَبْلَهُمَا ،  
لَا صَبَحًا وَلَا مُمْرِيًا وَلَا عَصَاءً ه . ثُمَّ يَنْتِ تَفْصِيلُ ذَلِكَ وَأَنَّهُ أَمْرُهُ بِقَضَاءِ الظُّهْرِ  
وَالْعَصْرِ لِأَنَّهُ أَوَّلُكَ وَقْتُمَا مِنْهُمَا ، وَأَتَمُّمَا مَقَرَّتَا الْوَقْتِ فِي بَعْضِ الْأَحْوَالِ .



مِنْ مَنِيَّ ، ثُمَّ الْوَدَاعُ ، وَهُوَ يُخَيَّرُ فِي النَّفَرِ ، إِنْ أُحِبَّ تَعَجُّلاً  
فِي يَوْمَيْنِ ، وَإِنْ أُحِبَّ تَأَخَّرَ .

✱ ✱

أَخْبَرَنَا الرَّبِيعُ بْنُ سَابِيَةَ قَالَ : قَالَ الشَّافِعِيُّ :

٤٩٣ — أَخْبَرَنَا ابْنُ عُيَيْنَةَ بِإِسْنَادٍ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ : « لَا يُمَسِّكَنَّ النَّاسُ عَلَيَّ بَشْيً ، فَإِنِّي لَا أَحِلُّ لِمٍ إِلَّا مَا أَحَلَّ اللَّهُ ، وَلَا أُحَرِّمُ عَلَيْهِمْ إِلَّا مَا حَرَّمَ اللَّهُ <sup>(١)</sup> » .

٤٩٤ — قَالَ الشَّافِعِيُّ : هَذَا مُنْقَطِعٌ . وَنَحْنُ نَعْرِفُ رِقَابَهُ طَاوُسٌ <sup>(٢)</sup> ، وَلَوْ بَدَّتْ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَيَبَيَّنَ فِيهِ أَنَّهُ عَلَى مَا وَصَفْتُ ، إِنْ شَاءَ اللَّهُ تَعَالَى . قَالَ :

(١) لم أجد هذا الحديث بعد طول البحث والتفتيح . ويظهر لي أنه سقط من إسناده شيء ، وأن يكون أصله : « أَخْبَرَنَا ابْنُ عُيَيْنَةَ بِإِسْنَادٍ [ عَنْ طَاوُسٍ ] عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ » الخ ، لقول الشافعي بعد ذلك : « وَنَحْنُ نَعْرِفُ قَوْلَهُ طَاوُسٌ » . فإنه لا مناسبة له إلا أن يكون طاووس هو الذي روى الحديث (مقطوعاً) فلم يذكر إن كان سمعه من صحابي أو من غيره ، ولذلك كان إسناده الحديث ضعيفاً ، لأنه مرسل .

(٢) هو طاووس بن كيسان الحنظلي . من كبار التابعين وفقهائهم . مات سنة ١٠٦ هـ ، عن بعض وسمين سنة .

وَأِنْ لَمْ يُصِيبِ النَّسَاءُ حَتَّى يَعْرِفَ حَالَ نَهِ النَّسَاءِ وَكُلُّ شَيْءٍ حَرَّمَ عَلَيْهِ الْحِلُّ ، مِمَّا كَانَتْ عَلَى نُسْلِكَ <sup>(١)</sup> مِنْ حُجَّتِهِ ، مِنْ الْبَيْعَةِ . نَبِيٍّ وَرَحِي الْجَمْعِ وَالْوَدَاعِ ، يَعْمُ هَذَا حَالاً خَارِجاً مِنْ إِحْرَامِ الْحِلِّ ، وَهُوَ لَا يَعْمَلُ شَيْئاً فِي الصَّلَاةِ إِلَّا وَاحِرَامِ الصَّلَاةِ قَدْ عَمَّ عَلَيْهِ .

٤٩١ — وَوَجَدْتُهُ مَأْمُوراً فِي الْحِلِّ بِأَشْيَاءَ إِذَا تَرَكَهَا كَانَ عَلَيْهِ فِيهَا الْبَدَلُ بِالْكَفَّارَةِ ، مِنَ الدَّمَاءِ وَالْعَوْمِ وَالْعِدَّةِ وَحُجَّتِهِ . وَمَأْمُوراً فِي الصَّلَاةِ ، بِأَشْيَاءَ لَا تَعُدُّ وَاحِداً مِنْ وَجْهَيْنِ : إِمَّا أَنْ يَكُونَ تَارِكاً لَشَيْءٍ مِنْهَا فَيُفْسِدَ صَلَاتَهُ ، وَلَا يُجْزِئُهُ كَفَّارَةٌ وَلَا غَيْرُهَا ، إِلَّا اسْتِثْنَاءُ الصَّلَاةِ . أَوْ يَكُونَ إِذَا تَرَكَ شَيْئاً مَأْمُوراً بِهِ ، غَيْرَ <sup>(٢)</sup> صُلْبِ الصَّلَاةِ — : كَنْ تَارِكاً لِفَعْلٍ ، وَالصَّلَاةُ مُجْزِئَةٌ عَنْهُ ، وَلَا كَفَّارَةٌ عَلَيْهِ .

٤٩٢ — ثُمَّ لِلْحَجِّ وَقْتُ آخِرٌ ، وَهُوَ الطُّلُوفُ بِأَبَيْتِ بَدَلِ النَّحْرِ ، الَّذِي يَحِلُّ لَهُ بِهِ النَّسَاءُ ، ثُمَّ لَمَّا آخَرَ ، وَهُوَ النَّفَرُ

(١) ط ه نسكه ه .

(٢) ط ه من غير ه .

٤٩٦ — وقد أمرنا بالتباعد ما أمرنا به <sup>(١)</sup> ، واجتنب ما تنهى عنه ، وفرض الله ذلك في كتابه على خلقه . وما في أيدي الناس من هذا إلا ما تنكروا <sup>(٢)</sup> به عن الله تبارك وتعالى ، ثم عن رسوله صلى الله عليه وسلم ، ثم عن دلائله .

٤٩٧ — ولكن قوله — إن كان قائله — « لا يُمكن الناس عليّ بشي » — : يدلُّ على أنَّ رسول الله صلى الله عليه وسلم إذا كان <sup>(٣)</sup> يوضع القدوة فقد كانت له خواصُّ ، أُبيح له فيها ما لم يُبيح للناس ، وحُرِّم عليه ما لم يحُرِّم على الناس . فقال : لا يُمكن الناسُ عليّ بشي من الذي لي أو عليّ دونهم ، فإن كان عليّ ولي دونه لا يُمكن به .

٤٩٨ — وذلك مثلُ أنَّ الله عزَّ وجلَّ إذا <sup>(٤)</sup> أحلَّ له من عدد النساء ما شاء ، وأن يستنكح المرأة إذا وهبت نفسها له ،

(١) كناية به ، لم تذكر في ط .

(٢) في ط ٤ و ما في أيدي الناس من هذا تنكروا به ٤ . وهو نفس عما في الأصل .

(٣) في ط ٤ لا إذا كان ٤ . و ما في يستعمل إذا ٤ متجوزة أخرجها ، غير متقدمة معنى التبرع . انظر الرسالة ( رقم ١١١٥ ) .

(٤) كناية وإذا ٤ لم تذكر في ط و هي آية في الخضوع ، وهي عن الخبرية أيضا .

« لا يُمكن الناسُ عليّ بشي » ولم يقل : لا تنكروا عليّ . بل قد أمر أن يُمكن عنه ، وأمر الله عزَّ وجلَّ بذلك .

٤٩٥ — قال الشافعي : أخبرنا ابن عُيينة عن أبي النضر <sup>(١)</sup> عن عُبيد الله بن أبي رافع <sup>(٢)</sup> عن أبيه أنَّ رسول الله صلى الله عليه وسلم قال : « لا أعرفن ما جاء أحدكم الأمر مما أمرت به أو نهيت عنه ، وهو منكى على إريكته <sup>(٣)</sup> ، فيقول ما نذري ، هذا ما وجدنا في كتاب الله عزَّ وجلَّ اتبعناه » <sup>(٤)</sup> .

(١) أبو النضر هو سالم بن أبي أمية النخعي ، مولى عمر بن عبد الله النخعي .

ناخعي صغير ثقة . مات سنة ١٢٧

(٢) عبيد الله ناخعي ثقة . وأبوه أبو رافع مولى رسول الله صلى الله عليه وسلم .

(٣) الأريكة : السرير .

(٤) الحديث معروف من رواية الشافعي باللفظ آخر ، سبأني برقم ( ٥١٥ ) ومعنى اللفظين واحد ، ولكن مذهب ط ظن أن هذا اللفظ خطأ ، أو مخالف للرواية بغيره كراه ، وكتبه على اللفظ الآتي . وهو تصرف غير جيد ، وقد وجدت في المستدرک للحاكم روايتين للحديث ، فربيتين من اللفظ الذي هنا ، إحداهما من طريق مالك عن أبي النضر ، باللفظ : لا أعرفن الرجل مكانا يأتيه الأمر من أمري ، مما أمرت به أو نهيت عنه ، فيقول ما نذري ، وهذا هو كتاب الله ، وليس هذا فيه . انظر المستدرک ( ١ : ١٠٩ ) . وأحدث حديث صحيح ، رواه الشافعي أيضا في الرسالة ( رقم ٢٩٥ ، ٢٩٦ ، ٦٢٢ ، ١١٠٦ ، ١١٠٧ ) وزواه أحمد وأبو داود والترمذي وابن ماجه وغيرهم . ووجدنا القول في إسناده ونسجه في شرحه على ترجمة .

٥٠٢ — مُدَّ : يَكُنْ فِيهِ وَجِيٌّ فَقَدْ قَرَضَ اللَّهُ عَزَّ وَجَلَّ  
فِي الرَّحِي السَّيِّئَةِ سَلْبَهُ فِيهِ ، فَمَنْ قَبِلَ عَنْهُ فَإِنَّمَا قَبِلَ بِقَرْضِ  
اللَّهِ عَزَّ وَجَلَّ .

٥٠٣ — قَالَ اللَّهُ تَبَارَكَ وَتَعَالَى : لِمَ وَمَا آتَاكُمْ الرَّسُولُ  
فَاتَّخِذُوهُ ، وَمَا نَهَاكُمْ عَنْهُ فَانْتَبِهُوا <sup>(١)</sup> .

٥٠٤ — وَقَالَ عَزَّ وَجَلَّ : لِمَ فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى  
يُحْكِمَ اللَّهُ أَيْمَانَهُمْ فِيمَا شَهِدُوا بِهِمْ ، ثُمَّ لَا يُحْكِمُوا فِي أَنْفُسِهِمْ حَرَجًا  
مِمَّا قَضَيْتُمْ وَيُسَلِّمُوا تَسْلِيمًا <sup>(٢)</sup> .

٥٠٥ — وَأَخْبَرَنَا عَنْ صَدَقَةَ بْنِ يَسَارٍ <sup>(٣)</sup> عَنْ عُمَرَ بْنِ  
عَبْدِ الْعَزِيزِ <sup>(٤)</sup> : سَأَلَ بِالْمَدِينَةِ فَاجْتَمَعَ لَهُ عَلَى أَنَّهُ لَا بَيْنَ حَقٍّ  
فِي أَقْلٍ مِنْ ثَلَاثَةِ أَشْهُرٍ <sup>(٥)</sup> .

(١) سورة العنكبوت آية ٧ (٢) سورة النساء آية ٦٥

(٣) صدقة بن يسار الجوزي ، سكن مكة ، وهو من الثقات . ولم عم محمد بن  
إسحق بن يسار صاحب السيرة ، خلافاً لما ورد ذلك ، لأن ابن إسحاق روى عنه في  
السيرة « حدثني يحيى صدقة بن يسار » . انظر سيرة ابن هشام (ص ٦٦٤ طيبة  
الأثرية) وتاريخ ابن كثير (٤ : ٨٥) .

(٤) هو الخليفة الأموي العادل ، أحد الحكماء الراشدين . ولد سنة ٦١  
ومات سنة ١٠١ .

(٥) هكذا ذكر هذا الأثر في الكتاب في هذا الموضع . وليس له صلة بما قبله  
ولا بما بعده ، ولا أعرف وجه ذكره . وماله كان مكتوباً بإحدى الكتاب ، لسبب  
من الأسباب ، ثم طُفِئَ بعض الناس بحيث منه فُقدناه في صتيه ١١

قَالَ اللَّهُ تَعَالَى : لِمَ حَاجَتَهُ لَكَ مِنْ دُونِ الشُّعْرَيْنِ <sup>(١)</sup> — : قَالَا يَكُنْ  
لأَحَدٍ أَنْ يَقُولَ : قَدْ جَاءَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَيْنَ  
أَكْثَرِ مِنْ أَرْبَعٍ ، وَنَكَحَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ امْرَأَةً  
بَغِيرَ مَيْتَةٍ ، وَأَخَذَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صَافِيًا مِنْ  
الْمَغَانِمِ ، وَكَانَ لِرَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ — : لِأَنَّ اللَّهَ عَزَّ وَجَلَّ  
قَدْ بَيَّنَّ فِي كِتَابِهِ وَعَلَى لِسَانِ رَسُولِهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ ذَلِكَ  
لَهُ دَوْرُهُمْ .

٥٩٩ — وَفَرَضَ اللَّهُ عَلَيْهِ أَنْ يُخَيَّرَ أَزْوَاجَهُ فِي الْقَتَامِ مَعَهُ  
وَالْفِرَاقِ ، فَلَا يَكُنْ لِأَحَدٍ أَنْ يَقُولَ : عَلَيَّ أَنْ أُخَيَّرَ امْرَأَتِي عَلَى  
مَا قَرَضَ اللَّهُ عَزَّ وَجَلَّ عَلَى رَسُولِهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ .

٥٠٠ — وَهَذَا مَعْنَى قَوْلِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ — إِنْ كُنْ  
قَالَ — « لَا يُسْكِنُ النَّاسُ عَلَيَّ بَشِيَّةً » ، فَإِنِّي لَا أُحِلُّ لَهُ إِلَّا  
مَا أَحَلَّ اللَّهُ ، وَلَا أُحَرِّمُ عَلَيْهِمْ إِلَّا مَا حَرَّمَ اللَّهُ » .

٥٠١ — وَكَذَلِكَ صَنَعَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ، وَبِذَلِكَ  
أَمَرَهُ ، وَافْتَرَضَ عَلَيْهِ أَنْ يَتَّبِعَ مَا أَوْحَى إِلَيْهِ . وَنَشَيْدُ أَنْ  
قَدْ اتَّبَعَهُ .

٥١٢ — وقال عز وجل : ﴿ مَنْ يُطِيعِ الرَّسُولَ فَقَدْ أَطَاعَ

اللَّهُ <sup>(١)</sup> ۝

٥١٣ — وقال : ﴿ فَلَا تَوَلَّيْكُمْ يٰ مُؤْمِنُونَ ۝ الْآيَةُ <sup>(٢)</sup>

قال الشافعي رحمه الله تعالى :

٥١٤ — أخبرنا الدارقطني <sup>(٣)</sup> عن عمرو بن [ أبي ] عمرو <sup>(٤)</sup>

عن المغلبي بن حنظل <sup>(٥)</sup> أن رسول الله صلى الله عليه وسلم قال : « ما تركت شيئاً مما أمركم الله تعالى به إلا وقد أمرتكم به ، ولا تركت شيئاً مما نهاكم عنه إلا وقد نهيتكم عنه <sup>(٦)</sup> » .

(١) سورة النساء ، آية ٨٠ .

(٢) سورة النساء ، آية ٦٥ وقد مضت الآية في النقرة ( رقم ٥٥٤ ) .

(٣) هو عبد العزيز بن محمد ، وقد مضى الكلام عليه في النقرة ( ١٦٣ ) .

(٤) في النسختين « عمرو بن عمرو » وهو خطأ . وهو عمرو بن أبي عمرو مولى المغلبي بن حنظل ، تابعي صحيح ، روى عن أنس من الصحابة ، وعن كثير من التابعين ، وهو مدني ثقة . مات سنة ١٤٤ .

(٥) D حنظل « بفتح الحاء والطاء المهملين وينهما نون ساكنة . والمغلب هذا الاختلاف في شخصه ، فاختلط على علماء التراجم رجل برجل ، حتى لقد زعموا أنه تابعي ، وجهوا حديثه مرسلًا . وقد حققت في شرحي على الرسالة ، في النقرة ( ٣٠٦ ) أن هذا الاسم أطلق على أكثر من واحد ، ووجدت أن راوي هذا الحديث صحابي ، من طبقة جبر بن عمر .

(٦) المثلث رواه الشافعي في الرسالة بهذا الاستدلال ، في النقرة ( ٨٠٤ ) . وكلمت عليه تفصيلاً في شرح النقرة ( ٣٠٦ ) وهو حديث صحيح فبحر الأرحية .

✱ ✱

٥٠٦ — قال الشافعي : إن الله عز وجل وضع نبيه صلى الله

عليه وسلم من كتابه ودينه بالموضع الذي أبان في كتابه .

٥٠٧ — فالغرض على خلقه أن يكونوا عاقلين بأنه لا يقول

فما أنزل الله عليه إلا بما أنزل عليه ، وأنه لا يخالف كتاب الله ،

وأنه بين عن الله عز وجل معنى ما أراد الله .

٥٠٨ — وبين ذلك في كتاب الله عز وجل :

٥٠٩ — قال الله تبارك وتعالى : ﴿ وَإِذَا تَشَاءَ عَلَيْنَا آيَاتُنَا

يُنَادِي قَالِ الَّذِينَ لَا يَرْجُونَ آفَاءَنَا أَلَمْ يَسْأَلْنَا عَنْ بُرْهَانٍ غَيْرِ هَذَا

أَوْ بَدَلَهُ ، قُلْ مَا يَكُونُ لِي أَنْ أُبْدِيَهُ مِنْ تِلْكَ آنَفِي ، إِنْ

أَتَّبِعُ إِلَّا مَا يُوحَىٰ إِلَيَّ <sup>(١)</sup> ۝

٥١٠ — وقال الله عز وجل لنبيه صلى الله عليه وسلم :

﴿ اتَّبِعْ مَا أُوحِيَ إِلَيْكَ مِنَ رَبِّكَ <sup>(٢)</sup> ۝

٥١١ — وقال مش هذا في غير آية

(١) سورة يونس آية ١٥

(٢) سورة الأعراف آية ١٠٦

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[وَمَا قَدَرُوا اللَّهَ حَقَّ قَدْرِهِ  
الَّذِي بِيَدِهِ الْحَيَاةُ وَالْمَوْتُ  
يَوْمَ لَا يُغْنِي عَنْهُمْ كَيْدُهُمْ  
شَيْئًا وَلَا هُمْ يُنصَرُونَ]

اقول منه<sup>(٣)</sup> ، وَرَجِمَ الْخُرَيْبِيُّ وَالَّذِينَ كَفَرُوا وَاللَّهُ أَتَى عَلَى الْأَمَلِكِ الْحَمْدَ

السَّارِقِ دُونَ بَعْضٍ ، وَبَعْضِ الزُّبَرَاءِ دُونَ بَعْضٍ (٢)  
— وَمِنْهُ هَذَا — لَا يَحْتَاطُ بِهِ — وَالسَّخُّ عَلَى الْخَلْقَيْنِ :

[illegible]

(c)

(١) سورة الزمر (٢) الحجرات

وزارت فی ط ، وحی ضروریہ ایام  
الکلام .

(۳) ط ه إنما أراد القاطن والجمل على بعضه الخ .

(١٠) كرر السابغي هذا المعنى في الرسالة . انظر الفقرات (٢٢٣—٢٢٧،

7AR, 789 — 787, 717, 7AR — 7V9, 730 — 732

(٥) سورة المائدة آية ٢٠

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عليه وساقول : « لا الفتيان إلا حكم مبعوثكم على أربابكم ،  
رأيتهم الأمر مما أوتيت به ، أو نهيت عنه ، فيقول : لا أدري ،  
ما وجدنا في كتاب الله اتبعناه ( ١ ) » .

٥١٧ — وقال  
الله  
ع  
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:   
والسارق  
والسارقة

(2)

(١) الحديث سبق في الغزوة (٤٩٥) بهذا الأسناد بنقل آخر جماعة. وبيننا

هناك أنه حديث صحيح .

(٢) ط و ي ن ا ح ج ، وما أنبأنا صحيح ، وهو الوراق المخذولة .

(٣) ط ه فينه ه بدل ه نكه .

٥٢٥ — فالمائدة تراثت قبل مسح الغنميت بالجوار في عَرَاقَة

بُيُوتَ ، والمائدة قبله .

٥٢٦ — وإن رَعِم أنه كن فَرَضُ وضوءه قبل الوضوء

الذي مسح (٢) رسول الله صلى الله عليه وسلم وفرض وضوء بعده ،

فَتَسَحَّ السَّحَجُ ؟

٥٢٧ — فليأتينا بفَرْضِ وضوءَيْنِ في التَّوَارِثِ ، فَإِنَّا لَا نَعْلَمُ

فَرْضَ الوضوءِ إِلَّا وَاحِدًا .

٥٢٨ — وَإِن رَعِمَ أَنَّهُ مَسَحَ قَبْلَ يَفْرَضُ عَلَيْهِ الوضوءُ ؟

فقد رَعِمَ أَنَّ الصَّلَاةَ بِلا وضوءٍ ! وَلَا نَعْلَمُهَا كُنْتُ قَطُّ إِلَّا بِوضوءٍ .

٥٢٩ — فَأَيُّ كِتَابٍ سَمِعَ نَسَخَ عَلَى الْخَلْفَيْنِ ؟

٥٣٠ — الْمَسْحُ (٣) كَمَا وَصَفْنَا مِنَ الْأَسْتَدْلَالِ بِسَنَةِ رَسُولِ اللَّهِ

صلى الله عليه وسلم ، كما كن جميع م سَنَ (٤) رَسُولُ اللَّهِ صلى الله

(١) ط د هـ ز هـ

(٢) ط د مسح فوه وكرهه و فيه لا داعي لردّها ، لأنه قد حذف المائدة

للمسلم هـ

(٣) ط المسح عن الخفين و زيادة يست في المخطوط

(٤) ط د بين هـ بدأ هـ سن هـ . و هو في المخطوط صحيح

٥٢٣ — فَلَمَّا مَسَحَ النَّبِيُّ صلى الله عليه وسلم عَلَى الْخَلْفَيْنِ

استدللنا على أَنَّ فَرَضَ اللَّهِ عزَّ وجلَّ غَسْلَ التَّمِيدَيْنِ ، إِنَّمَا هُوَ

على بعض التوضيئين دون بعضٍ ، وإنَّ الْمَسْحَ لِمَنْ أَدْخَلَ رِجْلَيْهِ

فِي الْخَلْفَيْنِ بِكُلِّ الطَّوَارِ ، استدللاً بِسَنَةِ رَسُولِ اللَّهِ صلى الله

عليه وسلم ، لأنه لَا يَمَسُحُ وَالْفَرَضُ عَلَيْهِ غَسْلُ الْقَدَمِ ، كما

لَا يَكْذِبُ الْقَطْعُ عَنْ بَعْضِ الشُّرَاقِ ، وَجَلَدَ الْمَاءَ عَنْ بَعْضِ

الرُّنَاةِ - : وَالْفَرَضُ عَلَيْهِ أَنْ يَجْلِدَ وَيَتَطَهَّرَ (١)

٥٢٤ — فَإِن ذَهَبَ ذَاهِبٌ إِلَى أَنَّهُ قَدْ يُرْوَى عَنْ بَعْضِ

أَصْحَابِ النَّبِيِّ صلى الله عليه وسلم أَنَّهُ قَالَ : سَبَقَ الْكِتَابُ

الْمَسْحَ عَلَى الْخَلْفَيْنِ (٢) ؟

(١) انظر الرسالة في الفقرات ( ٢٢٠ - ٢٢٢ ، ١٦١٠ - ١٦٢١ ) . وهو

(٢) يعني بذلك إكثار المسح على الخفين ، بأن حكم الكتاب — وهو

القرآن — غسل القدمين ، وهو مقدم على غيره وساق ، فلا يرخس في المسح ،

بتقديم شيء آخر من الأخبار على الكتاب ، فهو يريد أن الكتاب نسخ المسح على

الخفين . وهذا الأثر مروي عن ابن عباس . رواه ابن أبي شيبة بإسناد عن عكرمة

عن ابن عباس ، كما ذكره المخطوط الربيعي في نصب الرأية ( ١ : ١٧٤ طيبة مصر )

وكذلك رواه البيهقي بإسناد في السنن الكبرى ( ١ : ٢٧٣ ) . وقد رد عطاء

ذلك على عكرمة بأنه رأى ابن عباس مسح على الخفين ، وقال البيهقي : « ويحتمل

أن يكون ابن عباس قال ما روى عنه عكرمة ، ثم لما جده ثبت من الذي صلى الله

عليه وسلم أنه مسح بعد نزول المائدة قال ما قال عطاء » . وروى البيهقي أيضاً عن

ابن عباس بإسناد صحيح أنه قال في المسح عليهما : « المسافر ثلاثة أيام في بيتين ،

في المعبر يوم وإيلة » . فهذا دليل آخر على ضعف الرواية الأولى عنه ، أو قرينة على

رجوعه عنها إن نحت .



## صِفَةُ نَبِيِّ النَّبِيِّ

حلى الله عليه وسلم<sup>(١)</sup>

قَالَ الشَّافِعِيُّ رَحِمَهُ اللَّهُ تَعَالَى :

٥٣٢ — أَصْلُ النَّبِيِّ مِنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ كُلَّ مَا نَبَى عَنْهُ فَبِهِ تَحَرَّمَ ، حَتَّى تَأْتِيَ عَنْهُ دَلَالَةٌ تَدُلُّ عَلَى أَنَّهُ إِنَّمَا نَبَى عَنْهُ لِمَعْنَى غَيْرِ التَّحَرُّمِ : إِنَّمَا أَرَادَ بِهِ نَبِيًّا عَنْ بَعْضِ الْأُمُورِ دُونَ بَعْضٍ ، وَإِنَّمَا أَرَادَ بِهِ النَّبِيَّ لِلتَّنْزِيهِ عَنِ الْمُنْهَجِ وَالْأَدَبِ وَالِاخْتِيَارِ .

٥٣٣ — وَلَا تَفْرُقْ<sup>(٢)</sup> بَيْنَ نَبِيِّ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَّا بِدَلَالَةٍ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ، أَوْ أَمْرٍ لَمْ يَخْتَلَفْ فِيهِ الْمُسْلِمُونَ ، فَتَعْلَمُ أَنَّ الْمُسْلِمِينَ كُلَّهُمْ لَا يَجْهَلُونَ سُنَّةً ، وَقَدْ يَكُنُّ أَنْ يَجْهَلِيَا بَعْضَهُمْ .

(١) ط ه كتاب صفة نبي رسول الله صلى الله عليه وسلم ، ولفظ وكتاب

ليس في المخطوط . وانظر الرسالة ( ص ٣٤٣ — ٣٥٥ ) .

(٢) ط ه ولا يفرق .

عليه وسلم من فرائض الله تبارك وتعالى ، مِثْلُ مَا وَصَفْنَا مِنَ السَّرِقِ وَالزَّانِي وَغَيْرِهَا .

٥٣١ — قَالَ الشَّافِعِيُّ : وَلَا تَكُونُ سُنَّةً أَبَدًا تُخَالِفُ الْقُرْآنَ<sup>(١)</sup> . وَاللَّهُ تَعَالَى الْمَوْقُوفُ .

(١) أَكَّدَ الشَّافِعِيُّ هَذَا الَّذِي جَاءَ ، وَكَرِهَ فِي الرِّسَالَةِ . وَانظر فهرس مواضعها في مادة ه الملبث ( ص ١٦٥ ) .

جميعاً مفسوختان بما اعتقدت<sup>(١)</sup> . ومعه أن أبيعك<sup>(٢)</sup> على أن بيعي . لأنه إنما اعتدت العتدة على أن مائت كاش واحد منهما على صاحبه شيئاً ليس في ملكه .

٥٣٨ - وهى النبى صلى الله عليه وسلم عن بيع الغرير<sup>(٣)</sup> . ومنه : أن أقول : سألتي هذه لك بعشرة نقلاً أو بخمسة عشر إلى أجل . فقد وجب عليه بأحد الثمين ، لأن البيع لم يعتد بشيء معلوم . وبيع الغرير فيه أشياء كثيرة ، نكتفي بهذا منها . وهى النبى صلى الله عليه وسلم عن الشغار<sup>(٤)</sup> والمنعة .

(١) انبىها مفسوختان بالعتدة التي اعتدت ، وهى عقد البيع المتضمن بيعتين . وفي ط د ما اعتدت ه ومعه خطأ ، لأنه لا يرد ثنى الاعتداد ، وإلا قل : ما اعتدتا .

(٢) ط د وهو أن يقول أيمك ه وكلمة ه بقول « لست في الخطوط »

ولا ضرورة لزيادة ، بل الذى تام بدونها .

(٣) قل في السهابة : « هو ما كان له ظاهر يفر المشتري ، وبأن مجهول . وقال الأرمزي : بيع الغرير : ما كان على غير عهدة ولا ثقة ، وتدخل فيه البيوع التي لا يجيد بكنهها المتبايعان من ك مجهول ه ، وحديث الثوري عن بيع الغرير رواه أحمد وسلم وأبو داود والترمذي والنسائي وابن ماجه ، من حديث أبي هريرة .

انظر بيل الأوطار ( ٥ : ٢٤٣ - ٢٤٨ ) .

(٤) الشغار : بكاء كان في الجماعية ، يقتريج الرجل بنت الرجل أو أخته .

على أن يتزوج الآخر أخته أو بنته ، بلا مهر للزوجتين . وثلاثة : الشكاح بلى أجل يمين . وكلام آخر . وباطل .



٣٥٤ - فمما نهى عنه رسول الله صلى الله عليه وسلم فكان

على التحريم ، لم يختلف أكثر المائة فيه<sup>(١)</sup> - : أنه نهى عن الذهب بالورق إلا هاء وهاء<sup>(٢)</sup> . وعن الذهب بالذهب إلا مثلاً بثلث يكاً بيك<sup>(٣)</sup> . وهى عن بيعتين في بيعة<sup>(٤)</sup> .

٥٣٥ - قلنا والمائة معاً : إذا تباع المتبايعان ذهباً بورق ، أو ذهباً بذهب ، فلم يتبايعا قبل أن يتفرقا - : فالبيع مفسوخ .

٥٣٦ - وكانت حجتها أن النبى صلى الله عليه وسلم لما نهى عنه صار محرماً .

٥٣٧ - وإذا تباع الرجلان بيعتين في بيعتهما فاليتمتان

(١) أي عامة أهل العلم .

(٢) ه الورق ه بكسر الواو : الفضة . وقوله ه هاء وهاء ، هو أن يقول كل واحد من المتبايعين : هاء فبعضه ما في يده ، يعني بذلك القبض في المجلس ، كما في الحديث الآخر ه إلا يبدأ يده . وقيل معناه : حالاً وهات ، أي خذ وأعط .

وهذا الحديث رواه الشافعي وأبو حنيفة ومسلم وغيرهم من حديث عمر بن الخطاب . وانظر بيل الأوطار ( ٥ : ٣٠٠ - ٣٠٢ ) . والآلة ( ٣ : ٢٥ - ٢٦ ) .

(٣) رواه أيضا الترمذي والشيخان وغيرهم من حديث أبي سعيد الخدري .

(٤) رواه أحمد والترمذي وصححه . وانظر بيل الأوطار ( ٥ : ٢٤٨ - ٢٥٠ ) .





٥٥٠ — ومما نهي <sup>(١)</sup> رسول الله صلى الله عليه وسلم في

بعض الحالات دون بعض ، واستدلنا على أنه إنما أراد بالنهاي عنه أن يكون منهيًا عنه في حال دون حالٍ أبسته صلى الله عليه وسلم <sup>(٢)</sup> ، وذلك : أن أبا هريرة روى عن النبي صلى الله عليه وسلم أنه قال : « لا يخطب أحدكم على خطبته أخيه <sup>(٣)</sup> » .

== ذكر أمثلة لذلك وقال ( رقم ٩٣٨ — ٩٤٠ ) : « فكل نكاح كان من هذا لم يصح ، وذلك أنه قد نهى عن عقده ، وهذا ما لا خلاف فيه بين أحد من أهل العلم . ومثله — والله أعلم — أن النبي نهى عن الشغار ، وأن النبي نهى عن نكاح الميت ، وأن النبي نهى الحريم أن ينكح أو ينكح . فمن فسح هذا كله من النكاح ، في هذه الحالات التي نهى عنها ، بطل ما نهى عنه ما ذكر قبله » . ثم قال ( رقم ٩٤٣ — ٩٤٤ ) : « ومثل هذا ما نهى عنه رسول الله من بيع الثمرة وبيع الرطب بالتمر إلا في المرابا ، أو غير ذلك مما نهى عنه . وذلك : أن أصل مال كل امرئ محرم على غيره ، إلا بما أحل به ، وما أحل به من البيع ما لم ينه عنه رسول الله . ولا يكون ما نهى عنه رسول الله من البيع خلا ما كان أصله محرما من مال الرجل لأخيه . ولا يكون المصيبة بالبيع التي نهى عنه حل محرما ، ولا حل إلا بما لا يكون مصيبة . وهذا يدخل في عامة العلم » . وانظر أيضا ( رقم ٩٥٩ ) من الرسالة .

(١) ط « ومما نهى عنه » .

(٢) قوله في أول النقرة « ومما نهى » خبر مقدم ، وللبند محذوف ، يدل عليه قوله بعد « وذلك أن أبا هريرة » الخ .

(٣) رواه الشافعي في الرسالة ( رقم ٨٤٧ ) ورواه أيضا البخاري والشافعي وغيرهما . وكذلك رواه مالك في الموطأ والشافعي في الرسالة وأحمد والبخاري والشافعي من حديث ابن عمر . (٩)

٥٥٩ — فاعتقدت <sup>(١)</sup> عن شيء محرمة <sup>(٢)</sup> ليس في ملكي ،

ينهي النبي صلى الله عليه وسلم <sup>(٣)</sup> ، لأنني قد ملكت آخرته ببيع آخرته <sup>(٤)</sup> . فخرجنا النبي مجزئ واحدًا . إذا لم يكن عنه ولاية تفرق بيده ، ففسخنا هذه الأشياء والشبهة والشمار ، كما فسخنا البيعتين <sup>(٥)</sup> .

(١) في المخطوط « أو اعتقدت » وهو خطأ .

(٢) في المخطوط « لغير محرم علي » وهو خطأ ، فخذلنا كلمة « لغير » .

(٣) في المخطوط « نهى » بدون الباء .

(٤) الكلام في المخطوطة مضطرب كما ترى ، وقد اجتمعنا في تصحيحه ، وصححت ط غيره فجعله هكذا : « ونهى النبي صلى الله عليه وسلم عن الشغار والبيعة ، ونهى النبي صلى الله عليه وسلم أن أعقد على شيء غير محرم علي ليس في ملكي » . وهو لا يزال مضطربا وفيه خطأ . وما صححناه إليه أقرب إلى العوالب وإلى أصل الكتاب .

(٥) يعني : لأنني بذلك أكون قد ملكت الشيء المحرم بالمقد المحرم .

(٦) لا تعذر اب التبعة المخطوطة في هذا الموضع تنقل هنا كلام الشافعي في الرسالة ، أيضا لا قصود . قال ( رقم ٩٣١ — ٩٣٣ ) : « وكل النساء محررات الفروج ، إلا بواحد من ميتين : النكاح والوضوء بملك الميت ، وهذا الميعان اللذان أذن الله فيهما . وسن رسول الله كيف النكاح الذي يجعل به الفرج المحرم قبله ، فمن فيه وليا وشهودا ورضا من المتكحة الثيب ، وسنقه في رضاها دليل على أن ذلك يكون برضا التزوج ، لا بفرق بينهما . فإذا جمع النكاح أربعا : رضا الزوجة الثيب ، واللزوج ، وأن تزوج المرأة وليها ، بشهود - : حل النكاح ، إلا في حالات ساذكرها ، إن شاء الله . وإذا تمس النكاح واحد من هذا كان النكاح فاسدا ، لأنه لم يثبت به كاشن رسول الله فيه الوجه الذي يجعل به النكاح » . ثم قال ( رقم ٩٣٦ ) : « فأنما إذا عقد بهذه الأشياء كان النكاح مفسوخا ، ينهي الله في كونه وعلى لسان نبيه عن النكاح بولايات نهي عنها ، فذلك مفسوخ » . ثم ==

٥٤٣ — ولو أن فاطمة أخبرته أنها رَضِيتَ واحدًا منهما لم يخطبها — إن شاء الله تعالى — على أسامة، ولكنها أخبرته بالخطبة واستشارته، فكان في حديثها دلالة على أنها لم ترضَ ولم تزد.

٥٤٤ — فإذا كانت المرأة بهذه الحال جاز أن تخطب، وإذا رَضِيتَ المرأةَ الرجالَ وبدأ لها، وأمرتُ بأن تُنكحَ<sup>(١)</sup> — لم يحز أن يُخطبَ في الحال التي لو رَوَّجها فيه الولي جاز نكاحه.

٥٤٥ — فإن قال قائل: فإن حالًا إذا كانت بعد أن تركن<sup>(٢)</sup> بنعم مخالفةً حالًا بعد الخطبة وقبل أن تركن، فكذلك حالًا حين خطبت قبل الركوب مخالفةً حالًا قبل أن تُخطب، وكذلك إذا أُعيدتَ عليها الخطبة وقد كنت امتنعت فسكنت، والشكك<sup>(٣)</sup> قد لا يكون رصًا؟

٥٤٦ — فليس فيها قول يجوز عندي أن يقال: إلا ما ذكرت بالاستدلال. ولولا الدلالة بالسنة كانت إذا خطبت حُرِّمتَ<sup>(٤)</sup> على غير خاطبها الأول أن يخطبها حتى يتركها الخاطب الأول<sup>(٥)</sup>.

- (١) يعني: أدت لولائها أن يزوجه إياه.
- (٢) في النسختين: قيل أن تركن وهو خطأ ظاهر.
- (٣) والشكك مصدر فصيح كالسكرت.
- (٤) ط د حريم.
- (٥) انظر الرسالة (رقم ٨٤٧ — ٨٦٢).

٥٤١ — فلو لا الدلالة عنه كان النهي في هذا مثل النهي في الأول، يحرم<sup>(١)</sup> إذا خطب الرجل امرأة أن يخطبها غيره.

٥٤٢ — فلما قالت فاطمة بنت قيس: «قال لي رسول الله صلى الله عليه وسلم: إذا حَلَّتْ قَاذِيبِي<sup>(٢)</sup>، فلما حَلَّتْ مِنْ عَدَّتِيَا أَخْبَرْتَهُ أَنَّ مَلَاوِيَةَ وَأَبَا جَبْهَمَ خَطَبَاهَا، فقال النبي صلى الله عليه وسلم: أَمَا مَلَاوِيَةُ فَنَمُلُوكُ لَا مَالَ لَهَا، وَأَمَا أَبُو جَبْهَمَ فَلَإِ يَصْعُ عَصَاهُ عَنْ عَاتِقِهِ، وَلَكِنْ أَنْكَحِي أُسَامَةَ بْنَ زَيْدٍ»، قالت: ففكرتُ، فقال: انكحي أُسَامَةَ، فنكحته فجاء الله فيه خيرًا وانفطت<sup>(٣)</sup> به<sup>(٤)</sup> — استدلالنا على أنه لا ينهي عن الخطبة ويخطب على خطبة إلا وزيه عن الخطبة حين ترضى المرأة فلا يكون بقي إلا العقد، فيكون إذا خطب أفسد ذلك على الخاطب المرضي، أو عليها، أو عليها معًا، وقد يمكن أن يُفسد ذلك عليها ثم لا يتم ما بينها وبين الخاطب.

- (١) ط د فيحرم.
- (٢) أي: أعلمي.
- (٣) الإغتيال: الفرح بالنعمة. والحديث رواه الشافعي في الرسالة (رقم ٨٥٦).
- وكذلك رواه أحمد وصحاب الكتب الستة إلا البخاري.

ولا ينبغي أن ترتكبه . فإذا عمد<sup>(١)</sup> ففعل ذلك أحد ركبن عاصياً بالفعل ، ويكمن قد ترك الاختيار ، ولا يحرم ماله ، ولا ما كن فيها له .

٥٥٢ — وذلك : مثل ما روي عنه أنه<sup>(٢)</sup> أمر الأكحل أن يأكل مما يليه ، ولا يأكل من رأس الثريد ، ولا يعبرس على قارعة الطريق<sup>(٣)</sup> . فإن أكل مما لا يليه ، أو من رأس الطعام ، أو عرس على قارعة الطريق — أثم بالفعل الذي فعله ، إذا كان عالماً بنهي النبي صلى الله عليه وسلم ، ولم يحرم ذلك الطعام عليه .

٥٥٣ — وذلك : أن الطعام غير النفل ، ولم يكن يحتاج

(١) د عمد من باب د ضرب ه . يعمد بنفسه وباللام ويأل . وانظر الرسالة (رقم ٥٩٩) .

(٢) يعني النبي صلى الله عليه وسلم .

(٣) الترمذي : نزول المسافر آخر الليل نزلة للبرم والاستراحة . كما في النهاية . وهذه إشارة إلى أحاديث ثلاثة : أما الأمر بالأكل مما يليه فقد رواه البزار ومسلم وغيرهما من حديث عمر بن أبي سلمة . وأما النهي عن الأكل من رأس الثريد فقد رواه أحمد وابن ماجه والترمذي وصححه من حديث ابن عباس . وأما النهي عن التمرس على قارعة الطريق فقد رواه مسلم وأبو داود والترمذي والنسائي من حديث أبي هريرة .

٥٥٧ — ثم يتفرق نهبي النبي صلى الله عليه وسلم على وجهين : ٥٥٨ — فكأن ما نهى عنه مما كن ممنوعاً إلا بحادث يحدث فيه يُحِلُّه ، أو أحدث الرجل فيه حادثاً منهيًا عنه — : لم يُحِلِّه . وكن على أصلٍ تحريمه ، إذا لم يأت من الوجه الذي يُحِلُّه .

٥٥٩ — وذلك : مثل أن أموال الناس ممنوعة من غيرهم ، وأن النساء ممنوعة<sup>(١)</sup> من الرجال ، إلا بأن يملك الرجل مال الرجل بما يُحِلُّه ، من بيع أو هبة وغير ذلك ، وأن النساء مُحَرَّمات إلا بنكاح صحيح أو ملك يمين صحيح .

٥٥٠ — فإذا اشترى الرجل شراءً منهيًا عنه فالتحرّم فيما اشترى قائم بعينه ، لأنه لم يأت من الوجه الذي يُحِلُّ منه . ولا يُحِلُّ المحرم . وكذلك إذا نكح نكاحاً منهيًا عنه لم تحل المرأة المحرمة .

٥٥١ — [وما نهيت<sup>(٢)</sup>] عنه من فعل شيء في ملكي ، أو شيء مباح لي ليس بملك لأحد — : فذلك نهبي اختياراً

(١) ط و ممنوعات ه .  
(٢) الزيادة سقطت من الأصل المخطوط ، وزدناها لجورها في صحة الكلام .

## ١ — فهرس مواضيع الكتاب \*

المرسوع	صفحة
مقدمة المصحح	٧
و المؤلف في وجوب اتباع أمر رسول الله والتسامح لحكمه	٩
(باب حكاية قول الطائفة التي ردت الأخبار كلها)	١٣
وفيه أن السنة مبنية للقرآن ، وأن المحكمة هي السنة ، وأن الواجب اتباعها ، وأن الأدلة يؤخذ بها كلها ، وبعضها أقوى من بعض	
السنة تبين ناسخ القرآن ومنسوخه	٢٢
العلم والخاص في لسان العرب وفي القرآن	٢٤
الخطأ والفضلال لا زمان لمن ردت الأخبار	٢٧
وجوب الأخذ بالدليل وإن لم يكن قطعياً	٢٩
جواز الاجتهاد والقياس للمأمّن فيما ليس فيه نص	٣٢
(باب حكاية قول من ردت خبر الخاصة)	٤٦
العلم منه ما نقله الخاصة عن العامة ، ومنه ما اجتمع عليه المسلمون ، ومنه علم الخاصة ، ومنه القياس	٤٩
مناطرة في الإجماع . وهي أقوى ما قرأنا في إبطال الإجماع الذي يدعيه القوم	٥١
وصف فقهاء البلدان واختلافهم ، وأن ذلك يمنع ادعاء الإجماع في علم الخاصة	٦٠

✽ الأرقام هنا أرقام الصفحات

إلى شيء يحل له به ، الطعام كان حلالاً ، فلا تحرم الحلال  
عليه بأن عصي في الموضع الذي جاء منه الأكل .

٥٥٤ — ونسأل ذلك النعمي عن التعميس على فاعلة

الطريق ، الطريق له مباح ، وهو عاصي بالتعميس على الطريق ،

ومعصيته لا تحرم عليه الطريق .

٥٥٥ — وإنما قلت يكون فيها عاصياً — : إذا قامت الحجة

على الرجل بأنه كان علم أن النبي صلى الله عليه وسلم نهى عنه .



الحمد لله حق حمده . أتممت تحقيق هذا الكتاب والتعاقب عليه عشر يوم الأربعة  
الجمادى الثاني سنة ١٣٥٩ = ٢٢ مايو سنة ١٩٤٠ والحمد لله الذي بنعمته تم  
الصلوات . وأسأل الله العسمة والتوفيق والرشاد . كتب أبو الأشبال عبد الله عنه

الترتیب	صفحة
الغرض عن الحق أن يملوا أن رسول الله لا يقول فيها أنزل الله إلا بما أنزل عليه ، وأنه لا يخالف كتاب الله ، وأنه يثبت عن الله معنى ما أراد الله	١١٨
ثم يثبت له جعل في القرآن ما بينه وبينه رسول الله	١٢٠
الترتيب عن من زعم أن المسح على الميمين منسوخ بآية الوضوء في سورة المائدة	١٢٢
( صفة نهى النبي صلى الله عليه وسلم )	١٢٥
وفيها أن النهي على التحريم إلا أن يدل دليل على غير ذلك	
أدلة النهي المحرم المقتضي الإجمالات	١٢٦
النهي الذي دل دليل على أنه في بعض الحالات دون بعض	١٢٩
تفسير النهي إلى نوعين : نهى عما أصله محرم ، فيحرم الفعل ، ويقضي بقاء تحريم الأصل ، وإبطال ما خالف النهي . ونهى عن فعل متصل بما أصله مباح ، فيحرم الفعل ، ويتيق الأصل على إباحته	١٣٢

الترتیب	صفحة
بيان الإجماع الصحيح ، وأنه المسائل المنوعة من الدين بالضرورة فقط	٦٥
رد الإجماع بأجماع أهل المدينة	٦٧
عود إلى تمام المناظرة في إبطال أدعاء الإجماع في حاشية العلم	٦٨
ما ثبتت به السنة ، وواقعة الحجة على الأخذ بخبر الواحد	٧٥
رد الإجماع المشكوك فيه	٨٨
حكم الاختلاف ، وما يجوز منه وما لا يجوز	٩٣
الفرق بين حكم الاختلاف ، وأنه موسع فيما ليس فيه نص أن يقول كل عالم بما يؤيده إليه إجماده . وقد مضى شيء من هذا المعنى في ص ٩٢ ، ٩٦	٩٧
الدليل على ذلك من الحديث	١٠١
( بيان فرائض الله تبارك وتعالى )	١٠٣
وفيها أن بعضها مبني في الكتاب ، وبعضها يحل بيته السنة	
يُترقى بين ما تشرق من الفرائض ، ويُجمع بين ما جمع منها ، فلا يُفاسد فرع شريعة على غيرها ، ويُثبت ذلك :	١٠٤
المسألة :	١٠٥
الركعة	١٠٦
( باب الصوم )	١٠٨
المسح	١١٠
تصنيف الشافعي لمدينة ولا يُمكن من الناس على بقيه ، فأني لا أحل لهم إلا ما أحل الله ، ولا أحرم عليهم إلا ما حرم الله ، ونفسيره بإياه على فرض صحته ، محتاماً منهكاً بضعفه .	١١٣

اسم السورة ورقها	رقم الآيات	رقم الفقرات
٦ الأنعام	٩٧	١١٧
٧ الأعراف	١٦٣	٦١
٩ التوبة	١٠٣	٤٧٩
١٠ يونس	١٥	٥٠٩
١٦ النمل	١٢	١١٨
	٨٩	٤
٢٢ الحج	٧٣	٦٠
٢٤ التور	٢	٥١٨، ٢١٤
	٦٣	٣٨
٣٣ الأعراف	٣٤	٣٠
	٣٦	٤٦٦
	٥٠	٤٩٨
	٦٢	٥٧
٣٩ الزمر	١٣	٥٩، ٥٨
٤٩ المجرات	٧	٥٠٣، ٤٦٤، ٤٠
٥٩ الطغر	٢	١٨
٦٢ الجمعة	٢	٤٤٢
٦٥ الطلاق	٣	٤٣٧
٩٨ البينة		

## ٢ — فهرس آيات القرآن\*

اسم السورة ورقها	رقم الآيات	رقم الفقرات
٢ البقرة	١٤٤	١١٥
	١٤٩	٤٤٠
	١٥٠	٤٤٠
	٢٢٩	٤٥١
	٢٨٢	٤٤٢
٣ آل عمران	١٠٥	٤٣٦
٤ النساء	١١	٥١
	٣٤	٤٥٠
	٦٥	٥١٣، ٥٠٤، ٤٦٥، ٣٦
	٨٠	٥١٢، ٣٧
	٦	٥٢٥
	٣٨	٥٢٢
	٩٥	٥١٧
		٤٤٩، ١٣١

\* وضعنا مثل هذا الفهرس في مقامات الرسائل. وقلنا هناك : علم النافع وفهمه من الكتاب والسنة . فهذا الفهرس جليل جداً . إذ يفيد القارئ تفسير النافع لكثير من آيات الكتاب الحكيم . ولو صنع مثل هذا لكل كتب النافع كانت لنا مجموعة نفيسة رائعة من قول النافع وفهمه في تفسير القرآن ، لا يكاد نجد مثلاً

في كتاب من كتب التفسير .  
ونرجو أن نوفق إلى ذلك ، بهداية الله وعونه .

الحسن بن أبي الحسن البصري ٢٦٩ ، ٢٨٥ ، ٣٠٨ ، ٣١٥ ، ٣١٧ ،  
الحسن بن صالح بن حي ٢٤٣  
الدروري = عبد العزيز بن محمد  
أبو رافع مولى رسول الله ( ٤٩٥ ، ٥١٥ ح )  
ابن أبي الزناد = عبد الرحمن  
الزخري بن خالد = مسلم بن خالد  
الزهري = محمد بن مسلم بن عبيد الله بن شهاب  
سالم أبو النضر مولى عمر بن عبيد الله ٤٩٥ ، ٥١٥  
سمد بن عباد ٢٤٣ هـ  
أبو سعيد الخدري ٢٨٢ ، ٣١٥  
سعيد بن سالم النخعي ٢٤١  
سعيد بن السيب ٢٤٢ ، ٢٦٩ ، ٢٨٢ ، ٣٠٨ ، ٣١٥ ، ٣١٧  
سفيان بن سعيد الثوري ٢٤٣  
سفيان بن عيينة ٢٩٣ ، ٤٩٥ ، ٥١٥  
أبو سلمة بن عبد الرحمن بن عوف ١٦٤ ، ٣١٥ ، ٤٥٨  
سليمان بن أبي سليمان أبو إسحق الشيباني ٣١٥  
الشيبي = عامر بن كبراجيل  
ابن شهاب = محمد بن مسلم بن عبيد الله  
الصحاب ٢٤٩ ، ٣٦٩  
صدقة بن بشر ٥٥٥  
طاوس بن كيسان الجعفي ٤٩٤  
عامر بن كبراجيل الشيباني القماني ٢٦٩ ، ٢٨٤ ، ٣٠٨ ، ٣١٥  
ابن عباس = عبد الله  
عبد الله بن عباس ٢٤٣ ، ٥٥٢ هـ  
عبد الله بن عمر ٥١٤ ، ٥٤٠  
عبد الله بن مسعود ٢٨٤

### ٣ - الأسماء

إبراهيم بن يزيد بن كبريت الشيباني ٣١٥  
إبراهيم بن يزيد النخعي ٢٤٥  
أسامة بن زيد ٥٢٢ ، ٥٤٣  
أبو إسحق الشيباني = سليمان بن أبي سليمان  
الأصم = محمد بن يعقوب أبو العباس  
أنس بن مالك ٥١٤ هـ  
الأصهار ٣٨٣ هـ  
أهل بدر ٣١٣  
أيوب بن أبي قبيصة الشيباني ٣١٥  
البراء بن عازب ٣١٥  
زهر بن سعيد ١٦٣ ، ٤٥٧  
بعض أصحاب النبي ٥٢٤  
أبو بكر الصديق ٣٧٧ ، ٣٩٢  
أبو بكر بن محمد بن عمرو بن حزم ١٦٤ ، ٤٥٨  
النايعون ٣٣٩  
الثوري = سفيان بن سعيد  
جابر بن عبد الله ٢٨٣ ، ٣١٥ ، ٣٤٣ ، ٥١٤  
أبو جهم ٥٤٢  
ابن أبي حازم = عبد العزيز

☆ الأرقام هنا أرقام الفهارس . وما وضعنا بحدوده حرف هـ فأننا ذكرنا  
بالطائفة . وإذا وضعنا الرقم بين قوسين وبحدوده حرف (ح) دلنا على أنه  
حديث مرفوع من صحابي .



السبب = سميد  
 الطالع بن كخطيب ٥١٤  
 معاوية بن أبي سفيان ٥٤٢  
 النيرة بن عبد الرحمن الخزرجي ٢٤٢  
 المهاجرون ٢٨٣ هـ  
 النخعي = إبراهيم بن يزيد  
 أبو الضر مولى عمر بن عبيد الله = سالم  
 أبو هريرة (١٦٤ ح) ، ٢٨٢ ، ٣١٥ ، ٤٥٨ ، ٤٥٤٠ (ج)  
 ٤٣٣ هـ ، ٥٣٨ ، ٥٥٢  
 الوليد بن عبد الملك بن مروان ٢٤٢ هـ  
 يزيد بن عبد الله بن الحاد ١٦٣ ، ١٦٤ ، ٤٥٧ ، ٤٥٨  
 يعقوب بن إبراهيم أبو يوسف ٢٤٣  
 أبو يوسف = يعقوب بن إبراهيم

عبد الرحمن بن أبي الزناد ٢٤٢  
 عبد العزيز بن أبي حازم ٢٤٢  
 عبد العزيز بن محمد بن أبي عبيد اللہ الأوردي ١٦٣ ، ٢٤٢ ، ٤٥٧ ، ٥١٤  
 عبد الملك بن مروان ٢٤٢ هـ  
 عبيد الله بن أبي رافع ٤٩٥ ، ٥١٥  
 عطاء بن أبي رباح ٢٤١ ، ٢٤٥ ، ٢٦٩ ، ٢٨٣ ، ٣٠٨  
 علقمة بن قيس النخعي ٢٨٤  
 علي بن أبي طالب ٣٨٥ ، ٣٤٣ هـ  
 عمارة بن حزم ٢٤٣ هـ  
 ابن عمر = عبد الله  
 عمر بن الخطاب ٣١٥ ، ٢٨٣  
 عمر بن أبي سلمة ٥٥٢ هـ  
 عمرو بن عبد العزيز ٥٠٥  
 عمرو بن المأمون (١٦٣ ، ٤٥٧ ح)  
 عمرو بن أبي عمرو ٥١٤  
 ابن خزيمة = سفيان  
 فاطمة بنت قيس (٥٤٢ ح) ، ٥٤٣ هـ  
 أبو قيس مولى عمرو بن المأمون ١٦٣ ، ٤٥٧  
 كثير بن أبي وداعة ٢٤٢ هـ  
 ابن أبي ليلى = محمد بن عبد الرحمن  
 مالك بن أنس ٢٤٢ ، ٢٦١  
 محمد بن إبراهيم النخعي ١٦٣ ، ٤٥٧  
 محمد بن عبد الرحمن بن أبي ليلى ٢٤٣  
 محمد بن مسلم بن عبد الله بن شهاب الزهري ٣١٥ ، ٣١٧ ، ٣٢٥  
 محمد بن يعقوب أبو العباس الأصم ١  
 مسلم بن خالد الزنجي ٢٤١



## ٤ - الأماكن

بدر ٣١٣ ، ٣٨٣

البيت = الكعبة

تبوك ٥٢٥

البصرة ٢٦٩ ، ٣٠٩

الراق ٢٤٥

القبلة = الكعبة

الكعبة ١١٥ ، ١١٩ ، ١٢٢ ، ١٢٥ ، ١٢٩ ، ١٤٠ ، ١٤١ ، ٤٤٩ ، ٤٧٣ ، ٤٩٢

الكوفة ٢٤٣ ، ٢٦٩ ، ٣٠٩

المسجد الحرام = الكعبة

اللدنية ٢٤٢ ، ٢٦٣ ، ٢٦٩ ، ٣٠٩ ، ٣١٥ ، ٣٣٧ ، ٣٤٦ ، ٥٠٥

مكة ٢٤١ ، ٢٤٥ ، ٢٦٩ ، ٣٠٩

موتى ٢٩٠ ، ٤٩٢